No. 26-5205

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JOSE AGUILAR LANDAVERDE - Pro-Se Petitioner

Vs.

UNITED STATES - Respondent

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

By: Jose Aguilar Landaverde
Reg. No.: 19664-056
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QUESTION PRESENTED

The question of law is whether a District Court is still providing due process of law when intentionally reserved (or refused) to rule in a motion to dismiss indictment, when such motion was supported with same circuit precedents, where the outcome was a dismissal. Supported even with Supreme Court's precedents where the outcome was also a dismissal, and wait until government push an "engineered" guilty plea that "kill" all claims for Constitutional violations, but yet at sentence, recognized that such motion could be granted if the accused would not have signed the guilty plea.

LIST OF PARTIES

All the Parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of Certiorari issue to review the judgement below.

OPPINIONS BELOW

From the Federal Courts:

The opinion of the U.S. Court of Appeals appears at **Appendix A .**

The opinion of the U.S. District Court appears at: **Appendix B .**

JURISDICTION

The Second Circuit issued its opinion on **July 6, 2023.** And denied rehearing on **May 28, 2025 -Received** on **Jun 10, 2025.-** The jurisdiction of this Court is invoked under **28 USC §1254(1).**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statute of limitations **18 USC §3282**

Amendment V	Due process of Law.
Amendment VI	Speedy Trial.
Amendment VI	Assistance of Counsel.
Amendment XIV	Due Process
Amendment XIV	Equal Protection of Laws.

STATEMENT OF THE CASE

A. Statutory Background

Title 18 USC §3282 -Statute of Limitations-

"No person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

To the extent pertinent here, §3282 of title 18, which govern the time within which most non capital federal offenses may be prosecuted.

"Statutes of limitation are statutes of repose. Those applicable to criminal prosecutions are principally ... designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past." **United States v. Eppolito,** 543 F. 3d 25, 47 (**2nd Cir.** 2008)(citing **Toussie v. United States,** 397 U.S. 112, 114-15 90 S.Ct. 858, 25 L. Ed 2d 156 (1970) "Statutes of limitations normally begin to run when the crime is complete." Id. at 115 - Quoting **Pendergast v. United States,** 317 U.S. 412, 418, 63 S.Ct. 268, 87 L. Ed 368 (1943).

"A continuing offense is, in general, one that involves a prolonged course of conduct; its commission is not complete until the conduct has run its course." **United States v. Rivera-Ventura,** 72 F. 3d 277, 281 (**2nd Cir.** 1995). "The limitation period for a continuing offense does not begin until the offense is complete." **Toussie,** 397 U.S. at 115.

EVIDENTIARY CHALLENGES

"We review evidentiary rulings for abuse of the district court's broad discretion, reversing only when the court has acted arbitrarily or irrationally" **United States v. Nektalov,** 461 F. 3d 309, 318 (**2nd Cir.** 2006)(Internal quotation omitted).

"Our 'highly deferential' review is particularly sensitive to 'the district court's superior position to assess relevancy and to weigh the probative value of evidence against its potential for unfair prejudice." **United States v. Gabinskaya,** 829 F. 3d 127, 134 (**2nd Cir.** 2016).

The district court has the duty to uphold and protect the Constitution. The Bill of Rights, indisputably, is part of the constitution of the United States. Amendment XIV had included "nor deprive -any person- liberty without due process of law ... nor deny ...equal protection of the laws." Under the equal protection of the laws, Amendment VI stated that an accused, as Mr. Aguilar, shall enjoy the right to a speedy and public trial.

When the government takes 8 plus years to arrest an individual and the span of time between the alleged crime (2007), and the trial (2020) is so long, the court should dismiss sua sponte the indictment, because the accused could not exercise his right to have compulsory process for obtaining witness in his favor due to the inaccuracy of the memoir **after 5 years**, that would cause direct prejudice in his defense.

This particular situation is not about Mr. Aguilar's case, but whether a district court could split what the Rule of law from the Supreme Court had established as a mandatory dismissal, but to "hold" that ruling until the government (and defense counsel) press for a "guilty" plea. This appears like an issue that easily could become a negative pattern that could damage the credibility if the final public perception is that the district courts can abuse its discretion to proceed arbitrarily regardless circuit's precedents or Supreme Court's providence. If so, there is not need for the Supreme Court to exist, there is no need for Congress to exist either. Constitution and statutes would be whatever the district judge feel should be **in aid for prosecution**. Then, innocent people, like Mr. Aguilar, will be permanently prejudiced physically, mentally and spiritually due to a wrongful conviction.

In this sense, the government could indict anybody, and wait even more than 8 years, until the government found a way to justify the indictment and connect the accused to an "always ready to snitch-witness" to construct a "prosecutable case" where true criminals facing long sentences could save thenselves as "informants" or "cooperative witness" when they hear about individuals with no evidence in their cases, seeking to go to trial. If so, could be no difference between The United States and those draconian governments like Rusia, China, Venezuela, Cuba or North Korea, where the courts operate with no respect to their constitutions, doing whatever they want because there is no law at all.

"Most courts have found a delay that approaches one year is presumptively Perjudicial." **United States v. Corona-Verbera,** 509 F. 3d 1105 (9th Cir. 2007); See also **United States v. Clark,** 83 F. 3d 1350 (11th Cir. 1996); **United States v. Ferreira,** 665 F. 3d 701 (6th Cir. 2011).

Despite the fact that either the agents or government have enough information to easily locate Mr. Aguilar under the name he has been used by 16 years in a daily basis -Rolando Alicea Ruiz- the extreme length of time between the indictment and the arrest (8 plus years), or the time between the alleged crime (2007) and the trial (2020) should be weighted heavily against the government for the district court to conclude that Mr. Aguilar's right to speedy trial has been denied, and the statute of limitations (18 USC §3282(a)) violated as well, and that the indictment should be dismissed, either by the court's own initiative or through defendant's motion in an expedite fashion.

If an accused already suffered prejudice by the extreme length of time, the court should not added more prejudice, delaying its lawful and legal conclusion "until the end of the trial" if that conclusion shall be a dismissal.

From:
U.S. Supreme Court Digest
Lawyers' Edition

Criminal Law §48 - speedy trial - Sixth Amendment guaranty

1. A speedy trial is guaranteed the accused by the Sixth Amendment to the United States Constitution.

Constitutional Law §37; Criminal Law §48 - right to speedy trial

2. The Sixth Amendment's guaranty to an accused of the right to a speedy trial is -fundamental- and is imposed by the due process clause of the Fourteenth Amendment.

Criminal Law §48 - right to speedy trial - length of delay

3. The right to speedy trial is a more vague concept than other procedural rights, for it is impossible to determine with precision when the right has been denied, and it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate.

Criminal Law §48 - right to speedy trial - remedy for deprival

4. The amorphous quality of the right to a speedy trial leads to the unsatisfactorily severe remedy of dismissal of the indictment when the right has been deprived; and while this is a serious consequence because it means that a defendant who may be guilty of a serious crime will go free without having been tried, and while this is more serious than an exclusionary rule or a reversal for a new trial, it is the only remedy.

Estoppel and Waiver §29 - definition

5. Waiver is an intentional relinquishment or abandonment of a known right or privilege.

Criminal Law §48 - delay

6. It is not necessarily true that delay in bringing an accused to trial benefits the accused, for there are cases in which delay appreciably harms the defendant's ability to defend himself.

Criminal Law §48 - right to speedy trial - nature

7. The nature of the right to a speedy trial makes it impossible to pinpoint a precise time in the judicial process when the right must be asserted or waived; but that fact does not argue for placing the burden of protecting the right solely on defendants, for a defendant has no duty to bring himself to trial.

Criminal Law §48 - right to speedy trial - balancing test

8. A claim that a defendant has been denied his right to a speedy trial is subject to a balancing test, in which the conduct of both the prosecution and the defendant are weighed.

Criminal Law §48 - right to speedy trial - balancing test

9. Employing a balancing test to determine if a defendant has been denied his right to a speedy trial necessarily compels courts to approach speedy-trial cases on an ad hoc basis.

Criminal Law §48 - right to speedy trial - deprivation - factors

10. Some of the factors which courts should assess in determining whether a particular defendant has been deprived of his rights to a speedy trial are (1) length of the delay, (2) the reason for the delay, (3) defendant's assertion of his right, and (4) prejudice to the defendant.

Criminal Law §48 - right to speedy trial - reasons for delay

11. In determining whether a defendant has been denied his right to a speedy trial, different weights should be assigned by the courts to different reasons for delay of the case by the government; a deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the government.

Criminal Law §48 right to speedy trial - assertion

12. A defendant's assertion of his right to a speedy trial is entitled to strong evidentiary weight in determining whether he has been deprived of this right.

Criminal Law §48 - right to speedy trial - deprivation - Factors considered

13. None of four factors is either a necessary or sufficient condition

Criminal Law §48 - right to speedy trial - deprivation - Factors considered

13. None of four factors is either a necessary or sufficient condition to the finding of a deprivation of a defendant's right to a speedy trial; rather, the four are related factors, and must be considered together with such other circumstances as may be relevant.

B. Factual and Procedural Background

S Y L L A B U S

Petitioner was brought to trial for "conspiracy to commit Hobs Act robbery of drug traffickers (18 USC §1951(a)), Conspiracy to distribute 5 Kilograms or more of cocaine (21 USC §§§846, 841(a)(1), 841(b)(1)(A)(ii)(II), more than 8 years after the acts were alleged to have occurred. The charges, then, were lodged outside the five-years statute of limitation either under the State of New York or Federal Statute **18 USC §3282(a)**, and were also in violation of the Constitution of the United States, Amendment VI.

This Honorable Supreme Court of the United States held in **Barker v. Wingo,** 92 S.Ct. 2182, 33 L. Ed 2d 101, 407 U.S. 514 (1972), that:

"A defendant's constitutional right to a speedy trial cannot be established by any inflexible rule but can be determined only on an ad hoc balancing basis, in which the conduct of the prosecution and that of the defendant are weighed. The court should assess such factors as the length of and reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."

This Honorable Supreme Court of the United States held in **Doggett v. United States,** 505 U.S. 647, 652, n.1 (1992) that:

"A post accusation delay approaching one year may be considered presumptively perjudicial, and that a delay of 'well over five years ... was extraordinary.'" Id. at 255.

This Honorable Supreme Court of the United States also held in **Strunk v. United States,** 412 U.S. 434, 439 40 (1973) that:

"A violation of the right to a speedy trial can only be remedied by a mandatory dismissal with prejudice of the case against the defendant." Id. at 522.

Factual and Procedural Background (continue)

S T A T E M E N T   O F   T H E   C A S E

1). The alleged offenses charged in the indictment occurred in 2007.

2). Government issue an indictment under-seal and likewise sealed the Arrest Warrant in 2010.

3). Mr. Aguilar's arrest happened in **2018, 11 years** after the presumed crimes occurred.

4). Mr. Aguilar's arrest was [by far] out of the statute of limitations, and in violation of the Constitution of the United States, Amendments V (Due process), VI (Speedy trial), XIV (Due process and Equal protection of the laws).

5). Since 2007 until 2018, neither the investigative agents nor the government obtained substantial evidence against Mr. Aguilar.

6). Since 2007 until today (2025), even when the government claimed that Mr. Aguilar has participated in "hundreds of robberies," neither the agents nor the government possessed, **even one** piece of substantial evidence of drugs, firearms, or participation in a robbery against Mr. Aguilar [See Appendix **F** "Affidavit"].

7). As a matter of fact, there is no substantial evidence of criminal conduct from Mr. Aguilar.

8). Defense counsel filed a "Motion to Dismiss Indictment" due to the extreme span of time (2007-2018) that denied Mr. Aguilar the right to have a speedy trial.

9). Supreme Court precedents and Second Circuit precedents supports that motion.

10). The statute of limitations **18 USC §3282(a)** also supports Mr. Aguilar.

11). The District court, contrary to Second Circuit precedent **(United States v. Moreno,** 789, F. 3d 72, 78 (2nd Cir. 2015) -and- **United States v. Black,** 918 F. 3d 243, 254 (2nd Cir. 2019) where the outcome was a dismissal on both cases**)**, extended the prejudice by holding its ruling over "Motion to Dismiss indictment" until the end of trial.

12). After jury selection, the prosecutor called for "approach the court in a bench conference." After that, counsel return to "advise" Mr. Aguilar to plead guilty because the government had a "credible witness" to win the trial, knowing, as a former prosecutor, there was no credible witness after 5 years (**11 years** in this case at the moment of the trial) due to the impairment of their memory (as stated in counsel's motion to dismiss indictment).

13). Counsel promised Mr. Aguilar that if he accepted and signed the plea agreement, he will dismiss the case at direct appeal [See Appendix **F** "Affidavit"][Appendix **G** "Court Record"].

14). Counsel provided constitutionally deficient assistance when he "advise" Mr. Aguilar to incriminate himself by signing the government's fictional history made in the "agreement" knowing that Mr. Aguilar never participated in any robbery, possessed no firearms, and possessed no cocaine, ever.

15). Counsel failed to filed "Notice of Appeal," even though he promised to do so, simply to obtain Mr. Aguilar's signature on the plea agreement. As a matter of fact, Mr. Aguilar requested him to appeal at sentencing, when the judge stated to Mr. Aguilar that he can appeal "if he feel something was unfair" [see Appendix **G**].

16). This Honorable Supreme Court of the United States held that counsel rendered ineffective assistance just by failing to file a "notice of appeal" See **Garza v. Idaho,** 139 S.Ct. 738, 749-50, 203 L. Ed. 2d 77 (2019).

17). Mr. Aguilar filed a "Motion to vacate sentence" (28 USC §2255).

18). Government's general response relied on Mr. Aguilar's signature over plea agreement "waving" direct or collateral attacks, even though the District judge allowed Mr. Aguilar to appeal regardless if he "waved" that right [see Appendix **G** "Court Record"].

19). District judge "adopted" **the government's** "findings" to deny motion. [See Appendix **C**]

20). District and Magistrates judges are arbiters between the government and the accused; the government **is not** an official of the court like a Magistrate judge to establish its "findings," and be "adopted" as a "Report and Recommendation."

21). Mr. Aguilar's §2255 was not only denied based on the "findings" of the government, but was also done without addressing the merits of all the claims, which is contrary to **Ake v. Oklahoma,** 470 U.S. 1087, 84 L.Ed 2d 53 (1985), where the Supreme Court instructed inferior courts to resolve all Constitutional claims raised in a petition for Habeas Corpus ... before granting or denying relief.

22). Mr. Aguilar filed a Motion under Rule 60 to correct the judgement on his §2255 but the motion was converted as "Second or successive §2255" and directed to the court of appeals [See Appendix E]. The Honorable Court of Appeals for the Second Circuit -Mandate- that Mr. Aguilar's §2255 was not successive because was not final because did not seek certiorari review in this Honorable Supreme Court, and remanded back to the District Court as a motion that "related back" to the original filing [See Appendix E]. But District Court denied the motion again **without** addressing the merits of the claims. Mr. Aguilar requested a COA, which was denied without responding the arguments [see Appendix A].

A R G U M E N T S

It appears that the District Court, the attorney for the government, and defense counsel conspired together to deny to Mr. Aguilar his Constitutional right to Due Process of law, because the the District Court, by "reserving"/"holding" his ruling, allowed the attorney for the government to compel acceptance of a "plea agreement" were Mr. Aguilar, an individual uneducated in laws, "gave up" his right to directly attack the statutory limitation violation and the constitutional right to have a speedy trial. The record shows that the court remarked on that [Appendix C], but Mr. Aguilar relied on defense counsel's promise, the dismssal of the case on direct appeal.

If Mr. Aguilar was cheated to sign a guilty plea under false promises of dismissal of the case on "direct appeal" when defense counsel knew, as former prosecutor (without explaining to Mr. Aguilar), that an 11(c)(1)(c) plea agreement "waves" a direct attack (the court recalled that fact to defense counsel at sentencing, but he still arguing that he has "strong arguments" for the appeal, to uphold his lies, preventing that Mr. Agilar decline/reject the "plea agreement" [See Appendix G]), then Mr. Aguilar seeks certiorari review to find out if, by considering Supreme Court's and Second Circuit case precedents, he has been prejudiced.

Mr. Aguilar argues that he is (still) actually and factually innocent of the presumed and charged crimes, and respectfully asks this Honorable Supreme Court justices of the United States, consider and analyze the following factors:

(1) There is no evidence of criminal conduct by Mr. Aguilar.

(2) The case against Mr. Aguilar totally lacks substantial evidence [like phone calls, text messages, surveillance video-recordings from the victims household, from traffic cameras, or video-recordings from investigative agents, etc.], showing Mr. Aguilar actively participated in [at least one] robbery, or at least showing possession of drugs or firearms.

(3) The span of time between the commission of the presumed crimes (2007) and the trial (2020) potentially triggers a dismissal due to speedy trial and statutorial violations.

(4) A case cannot be sustained only with circumstantial evidence (desperate snitches with lots of evidence against them), when the span of time of the case, has been extraordinarily long.

(5) The indictment, which was issued [under seal] against Rolando Alicea Ruiz, alleged that the defendant had been hidden for 4 years, despite the fact he used the same name to open bank accounts, manage his restaurant "Alondra," enroll in "Sampson Community College," etc. [Appendix **F**]. In fact, the "motion to Suppress" evidence was unreasonable, whereas it was for an incident where Mr. Aguilar was stopped for the Sampson County Sheriff's Department, where the cops checked his Driver Licence (NCIC)($X)(as all cops always check for Arrest Warrants), and such Driver Licence was in the same name (Rolando

Alicea Ruiz) that was in the Arrest Warrant, but also the address at the Driver Licence were the same where Mr. Aguilar was Arrested years later. Mr. Aguilar used these name -Rolando- about 16 years, in a daily basis, until his arrest.

REASONS TO GRANT PETITION

The only substantial evidence sustaining this case has been Mr. Aguilar's signature in the plea agreement. The signature was only possible due to the lies from defense counsel, promising the dismissal of the case at direct appeal. The "plea offer" was only possible due to the court's "hold" in his ruling over motion to dismiss.

Mr. Aguilar believes that when a District Court acts in a different direction from Supreme Court and Second Circuit precedents, not only to deny due process to the accused, but in fact, creates an split (and confusion) in what the law is, or what the law demands.

When the District Court does not follow Supreme Court and Second Circuit precedents that compel a dismissal, such a decision is akin to bias or conspiracy to deny the right of due process of law. This "hold" should not be allowed in the first place, not only because by Supreme Court and Second Circuit precedents compel a dismissal, but because at sentencing, was the same District Judge whom ironically affirmed that the indictment could be dismissed "if defense might prevailed on that motion" [see: Appendix G]. Mr. Aguilar argues that these "hold" has prejudiced him then.

The question of law is whether a District Court still providing due process when it reserved (refused) to rule a motion to dismiss indictment, when such motion was supported with Circuit court precedents, where the outcome was a dismissal (See **united States v. Moreno,** 789, F. 3d 72, 78 (2nd

Cir. 2015); **United States v. Black,** 918 F. 3d 243, 254 (2nd Cir. 2019)), Supreme Court precedents, were the outcome was a dismissal too, and the length of time at issue in such cases, has been either shorter or similar (See **Barker v. Wingo,** 407 U.S. 514 (1972); **Strunk v. United States,** 412 U.S. 434, 439 40 (1973); **Doggett v. United States,** 505 U.S. 647, 652 n.1 (1992)), but where District judge ironically recognized later at sentencing that "there was some chance at least that the defense might have prevailed on that motion," in other words, that such motion could be granted if Mr. Aguilar wouldn't have never signed the plea.

Again, the question of law is, a court still constitutionally providing due process by delaying a ruling that potentially could dismiss the indictment, or these delay to rule becomes a fundamental error of Constitutional magnitude that has been oversight ab initio for the lower courts.

COURT SHOULD INTERVENE

It is Mr. Aguilar belief that a delay in a ruling that could dismiss an indictment becomes unconstitutional, since it kill the spirit of fairness and the credibility when the perception appears like it was the court who tilt the scales in behalf of the government to push an "engineered" plea agreement with which the government easily can circumvent any violation of a Constitutional right or any violation to any statutorial protection.

Appearance of biasness seriously diminished the public confidence in the federal system of justice, since the Courts should maintain the perpetual perception that they operate as arbiters between government and defendants.

Therefore this Honorable Supreme Court of the United States should intervene and stop this Ultra Vires prosecution and egregious overreaches.

C O N C L U S I O N

This petition for a Writ of Certiorari should be granted.

Respectfully submitted this **21th** day of **July, 2025**[1].

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C E R T I F I C A T E   O F   S E R V I C E

I, Jose Aguilar Landaverde, do swear and certify that on this **21th** day of **July, 2025**[1] as required by Supreme Court Rule 29 I have served the enclosed an original copy of: MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, by depositing an envelope containing the above documents in the United States mail properly addressed to them and with firsst-class postage prepaid, within 3 calendar days, was mailed -prepaid postage- to the following address(es):

* Supreme Court of the United States -office of the clerk- 1st Street, N.E.; Washington, D.C. 20543. Via Certified Mail: 7011 2970 0004 0393 4932
* Solicitor General of the United States; Department of Justice; 950 Pennsylvania Ave., N.W.; Room 5614; Washington, D.C. 20530-0001.
-Regular Mail.-

Jose Aguilar Landaverde.

D E C L A R A T I O N

I declare under penalty of perjury that the above statements are true and correct on the best of my knowledge.

Executed on: July 21, 2025[1].

Jose Aguilar Landaverde.

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1. PURSUANT TO THE PRISON MAILBOX RULE, A PRO-SE PRISONER'S PLEADINGS ARE DEEMED TO HAVE BEEN FILED ON THE DATE THAT THE PRISONER SUBMITS THE PLEADING TO THE PRISON AUTHORITIES FOR MAILING. (CASUY v. CAIN, 450 F. 3d 601, 604 (5th Cir. 2006)(CITING HOUSTON v. LACK, 487 U.S. 266 (1988).