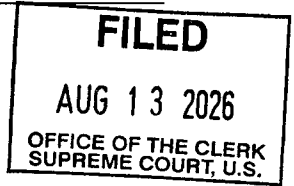


26 - 5348

ORIGINAL

CASE No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



In re MICHAEL HAGAR - PETITIONER

PETITION FOR AN EXTRAORDINARY
WRIT OF HABEAS CORPUS

Michael A. Hagar
Oriana House, Inc.
Cleveland, Ohio
1829 East 55th Street
Cleveland, OH 44103

QUESTIONS PRESENTED

1. Is Petitioner in custody in violation of the Constitution and laws of the United States due to judicial misconduct during the execution of his sentence — specifically, a violation of the Fifth Amendment Due Process Clause and the Equal Protection of Laws — when the judges involved in the direct appeal, § 2255 motion, and certificate of appealability proceedings engaged in a course of conduct that denied Petitioner the fair and due administration of justice, rendering the § 2255 remedy by motion inadequate and ineffective to test the legality of his detention; and would Petitioner have prevailed under his consolidated ineffective assistance of counsel claims but for that misconduct?
2. Is Petitioner in custody in violation of his Sixth Amendment right to effective assistance of counsel when his trial and appellate attorneys — James Jenkins and Marisa Serrat — failed as a unified course of conduct to: (a) investigate the false affidavit and obtain the June 2, 2016 email with complete header information establishing that the government used false information to obtain the arrest warrant and indictment in the wrong district; (b) argue improper venue rather than jurisdiction at every stage where the label determined preservation, thereby forfeiting the venue claim and allowing the appellate court to manufacture a fact not in the trial record; (c) connect the venue defect to the Speedy Trial Act violation — under which 669 non-excluded days elapsed against a 70-day limit with waivers induced by a false premise and used as plea leverage — such that dismissal with prejudice in any proper forum was mathematically inevitable; (d) establish that Cynthia Burke is not an immediate family member of Rebecca Gentle as defined by 18 U.S.C. § 115(c)(2)(B); and (e) request a ruling on the motion to dismiss for violation of the Speedy Trial Act and Sixth Amendment, thereby allowing the claims to be deemed abandoned on appeal and denying Petitioner any merits review of a statutory violation that exceeded the 70-day limit by 599 days?

3. Where judicial misconduct during the execution of sentence has rendered the § 2255 remedy inadequate and ineffective — because the courts treating a new independent civil suit as a continuation of the criminal case adopted a manufactured appellate fact rather than making independent findings from the trial record — and no lower court within the circuit that produced the error can provide untainted review, does the failure to grant the writ of habeas corpus operate as a suspension of the writ in violation of Article I, Section 9, Clause 2 of the Constitution, and deny Petitioner the one fair opportunity to present his federal claims that Congress guaranteed in enacting the Antiterrorism and Effective Death Penalty Act?

LIST OF PARTIES

Petitioner is Michael A. Hagar.

Respondent is Rebecca Krzeminski, Program Manager, Oriana House Inc., Cleveland.

RELATED CASES

United States v Michael A. Hagar, Case No. 1:16-CR-00273, United States District Court for the Northern District of Ohio. Amended Judgment entered June 11, 2019.

United State v Michael A. Hagar, Case No. 19-3591, United States Court of Appeals for the Sixth Circuit. Judgment entered August 3, 2020. Reported at 622 Fed. App' x 361.

Michael A. Hagar v United States, Case No. 20-6394, Supreme Court of the United States. Judgment entered January 11, 2021.

Michael A. Hagar v United States, Case No. 1:21-CV-1136 / 1:16-CR-000273, United States District Court for the Northern District of Ohio. Judgment entered February 2, 2022. Case docketed on criminal docket. Reported at 2022 U.S. Dist. LEXIS 19214.

Michael A. Hagar v United States, Case No. 22-3171, United States Court of Appeals for the Sixth Circuit. Judgment entered July 26, 2022. Reported at 2022 U.S. App. LEXIS 20595. Petition for rehearing en banc by three judge panel, judgment entered September 16, 2022. Petition for rehearing en banc judgment entered October 3, 2022. Reported at 2022 U.S. App. LEXIS 27639.

Michael As. Hagar v United States, Case No. 22-6501, Supreme Court of the United States. Judgment entered February 21, 2023.

Michael A. Hagar v Federal Bureau of Investigation, Case No. 1:22-CV-00101, Eastern District of Texas, Beaumont Division. Report and Recommendation of United States Magistrate Judge filed March 7, 2024. Reported at 2024 U.S. Dist. LEXIS 56337, Memorandum and Order Adopting the Magistrate Judge's Report and Recommendation entered March 25, 2024. Reported at 2024 U.S. Dist. LEXIS 53271.

Michael A. Hagar v Federal Bureau of Investigation, Case No. 25-40188, United States Court of Appeals for the Fifth Circuit. Judgment entered on March 26, 2026.

Michael A. Hagar v Federal Bureau of Investigation, Case No. 26-5112, Supreme Court of the United States.

TABLE OF CONTENTS

	Page
Questions Presented	ii
List of Parties	iv
Table of Contents	v
Table of Authorities	vii
Relief Sought	1
Unavailability of Relief in Other Courts	1
Unsuitability of any Other Form of Relief	2
Reason for Not Making Application to the District Court of the District in Which the Applicant is Held	2
Jurisdictional Statement	3
Constitutional and Statutory Provisions Involved	3
Statement of the Case	3
A. The Affidavit, the Choice of Court, and the Timing of Filing (June 2016)	3
B. The Indictment Built on the False Server Allegation (2016).....	5
C. The Speedy Trial Waivers and the Pretrial Period — 669 Non-Excluded Days (October 2016 – February 2019)	5
D. The Government's Concealment and the Superseding Indictment (2018)	6
E. Trial Testimony Establishing No Email Reached the NDOH (February–March 2019)	7
F. Direct Appeal: The Addition To and Distortion of the Evidence (2020)	9
G. Section 2255 and Collateral Review: The Addition to and Distortion of the Evidence Adopted as Binding Truth (2021–2022)	10
Reasons for Granting the Writ	12
I. Judicial Misconduct During the Execution of Petitioner’s Sentence Rendered the § 2255 Remedy Inadequate and Ineffective Because Petitioner Would Have Prevailed on His Ineffective Assistance Claims	12

	Page
A. Direct Appeal: Manufacturing a Fact After Finding Forfeiture	12
B. Section 2255: Adjudicating the Appellate Record Instead of the Trial Record	15
C. Certificate of Appealability: Deciding the Merits Without Jurisdiction	16
D. The Prejudice: Petitioner Would Have Prevailed on His IAC Claims	17
II. The Consolidated Ineffective Assistance Claim: A Unified Pattern of Failures That Destroyed Petitioner’s Only Viable Defense and Constitutes a Complete Failure of Adversarial Testing Under Cronic	17
A. Failure to Investigate the False Venue Predicate and Obtain the June 2, 2016 Email Header	18
B. The “Jurisdiction” Substitution: Forfeiture by Design	21
C. The Unified Venue and Speedy Trial Claim: Counsel's Failure Guaranteed Loss of an Inevitable Dismissal With Prejudice	22
D. Failure to Establish Burke Is Not an Immediate Family Member of Gentle	25
E. Failure to Request a Ruling on the Motion to Dismiss for Violation of the Speedy Trial Act	27
III. The § 2255 Remedy was Rendered Inadequate and Ineffective: The District Court Treated an Independent Civil Action as a Continuation of the Criminal Case, Denying Petitioner the Independent Factual Adjudication the Law Requires	28
IV. Denial of the Writ Suspend the Privilege of Habeas Corpus, Denies Petitioner the One Fair pportunity Congress Guaranteed, and Leaves Uncorrected a Proceeding Constitutionally Defective from Root to Crown	34
Conclusion	39

TABLE OF AUTHORITIES

Cases	Page
Barker v. Wingo, 407 U.S. 514 (1972)	23
Boumediene v. Bush, 553 U.S. 723 (2008)	34
Bracey v. Gramley, 520 U.S. 899 (1997)	29
Brady v. Maryland, 373 U.S. 83 (1963)	19
Buck v. Davis, 580 U.S. 100 (2017)	16, 30
Caldwell v. State of Texas, 137 U.S. 692 (1891)	17
Dep't of Homeland Sec. v. Thuraissigiam, 207 L. Ed. 2d 427 (2020)	34
Ex parte Hawk, 321 U.S. 114 (1944)	33, 34
Ex Parte Yerger, 75 U.S. 85 (1869)	35
Ex parte Tom Tong, 108 U.S. 556 (1883)	2, 28, 34
Florida Cent. R.R. Co. v. Schutte, 103 U.S. 118 (1881)	14
Harris v. Nelson, 394 U.S. 286 (1969)	38
Heflin v. United States, 358 U.S. 415 (1959)	2, 28
Hibbs v. Winn, 542 U.S. 88 (2004)	31
Hill v. United States, 368 U.S. 424 (1962)	38
Jones v. Hendrix, 599 U.S. 465 (2023)	31-32, 35, 36
Massachusetts v. United States, 333 U.S. 611 (1948)	14
Martin v. Hiatt, 174 F.2d 350, (5th Cir. 1949)	32
Mayberry v. Pennsylvania, 400 U.S. 455 (1971)	12
Miller-El v. Cockrell, 537 U.S. 322 (2003)	16, 30
Montclair v. Ramsdell, 107 U.S. 147 (1883)	31

Cases	Page
Mooney v. Holohan, 294 U.S. 103 (1935)	16, 21
Moore v. Dempsey, 261 U.S. 86 (1923)	36
Musacchio v. United States, 577 U.S. 237 (2016)	13
Quercia v. United States, 289 U.S. 466 (1933)	13
Reyes-Requena v. United States, 243 F.3d 893 (5th Cir. 2001)	38
Riddle v. Dyche, 262 U.S. 333 (1923)	13, 17, 26, 28
Robinson v. Swope, 197 F.2d 633 (9th Cir. 1952)	29
Rosner v. United States, 10 F.2d 675 (2d Cir. 1926)	12
Stirone v. Markley, Warden, 345 F.2d 473 (7th Cir. 1965)	38
Strickland v. Washington, 466 U.S. 668 (1984)	17, 21, 27
Strickler v. Greene, 527 U.S. 263 (1999)	19
Townsend v. Sain, 372 U.S. 293 (1963)	30
Turner v. United States, 183 F.3d 474 (6th Cir. 1999)	30
United States ex rel. Leguillou v. Davis, 212 F.2d 681 (3d Cir. 1954)	33-34
United States v. Burton, 584 F.2d 485 (D.C. Cir. 1979)	21
United States v. Carlone, 666 F.2d 1112 (7th Cir. 1981)	25
United States v. Doggett, 505 U.S. 647 (1992)	23
United States.” Brown v. Allen, 344 U.S. 443 (1953)	33
United States v. Hagar, 822 F. App'x 361 (6th Cir. 2020)	10, 14, 15, 21, 24, 26
United States v. Jefferson, 674 F.3d 332 (4th Cir. 2012)	7
United States v. Marquez-Perez, 835 F.3d 153 (1st Cir. 2016)	12-13, 16
United States v. Rodriguez-Moreno, 526 U.S. 275 (1999)	23

Cases	Page
United States v. Sylvester, 868 F.3d 503 (6th Cir. 2017)	25
Utility Air Regulatory Group v. EPA, 573 U.S. 302 (2014)	31

CONSTITUTIONAL PROVISIONS

U.S. Const. art. I, § 9, cl. 2 (Suspension Clause)	34
U.S. Const. art. III, § 2, cl. 3 (Venue Clause)	22
U.S. Const. amend. IV (Warrant requirements)	passim
U.S. Const. amend. V (Due Process)	passim
U.S. Const. amend. VI (Speedy Trial; Venue; Counsel)	22, 24

STATUTES

18 U.S.C. § 115(c)(2)(B) (Immediate family member definition)	26
18 U.S.C. § 875(c) (Threatening communications)	5
18 U.S.C. § 2261A(2)(B) (Cyberstalking)	5, 14, 26
18 U.S.C. § 3161 et seq. (Speedy Trial Act)	passim
18 U.S.C. § 3161(h)(7)(C) (No exclusion for lack of diligent preparation)	25
18 U.S.C. § 3162(a)(2) (Dismissal for STA violation)	18, 23, 24
18 U.S.C. § 3237 (Venue for continuing offenses)	22
28 U.S.C. § 1651(a) (All Writs Act)	3
28 U.S.C. § 2106 (Power to vacate and direct dismissal)	3
28 U.S.C. § 2241 (Habeas corpus jurisdiction)	3
28 U.S.C. § 2254(b)(1)(B)(ii) (State custody; remedies in Federal courts)	31
28 U.S.C. § 2255 et seq. (Section 2255 Post Conviction Relief)	Passim

STATUTES	Page
-----------------	-------------

28 U.S.C. § 2255(b) (Section 2255 proceedings — findings required)	15, 29, 30
28 U.S.C. § 2255(e) (Saving clause)	2, 3, 31, 32, 33, 34, 38
28 U.S.C. § 2255(h) (second or successive motion)	32, 35

RULES

Rules Governing Section 2255 Proceedings, Rules 5(b)	29
Rules Governing Section 2255 Proceedings, Rules 6	29
Rules Governing Section 2255 Proceedings, Rules 8	15, 30

**IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM**

RELIEF SOUGHT

Petitioner Michael A. Hagar prays that a writ of habeas corpus ad subjiciendum issue to Rebecca Krzeminski, Program Manager, Oriana House Inc., Cleveland, commanding her to produce the body of this Petitioner in Court forthwith, together with the cause of his detention, and that Petitioner may be discharged and set at liberty. Petitioner further prays that a writ of certiorari issue to the Clerk of the Sixth Circuit Court of Appeals and the Clerk of the District Court for the Northern District of Ohio, commanding them to certify to this Court the complete record of the proceedings against Petitioner in those courts, including all trial transcripts, so that the errors set forth in this petition may be fully examined and corrected.

UNAVAILABILITY OF RELIEF IN OTHER COURTS

No other court can grant the relief sought by this petition. Petitioner is confined within the Northern District of Ohio — the same district that tried him, denied his § 2255 motion without an evidentiary hearing, denied discovery of the dispositive document, and imposed the 180-month sentence at issue. The Sixth Circuit Court of Appeals added to and distorted the evidence with the false fact that serves as the load-bearing premise of every denial Petitioner has received. Its direct appeal panel stated that Cynthia Burke “received and reviewed” Petitioner's emails at her Beachwood office — a statement directly contradicted by Burke's own direct and cross-examination testimony, App. Q, a.72 & a.74, the government's Appellee Brief, App. W, a.97, the Appellant Brief, App. V, a.88, and Coberly's trial testimony, App. P, a.54–66. That manufactured fact was then adopted by the § 2255 court, the COA

court, and every judge of the Sixth Circuit who declined to request en banc review. The circuit has institutionally committed to a factual conclusion the trial record demonstrates is false. The saving clause of 28 U.S.C. § 2255(e) is unavailable in this circuit as applied to Petitioner's claims. Only this Court, with supervisory authority over both the NDOH and the Sixth Circuit, can provide untainted review.

UNSUITABILITY OF ANY OTHER FORM OF RELIEF

No other form of relief will protect the rights of Petitioner because the judicial misconduct of the judges involved in the prior proceedings has foreclosed available remedies. As applied to the Petitioner, the § 2255 remedy was rendered inadequate and ineffective not by ordinary adverse rulings but by a structural error: the § 2255 court treated an independent civil suit to enforce the civil right of personal liberty as a continuation of the criminal case — adopting the appellate court's addition to and distortion of the evidence (the manufactured fact) rather than independently examining the trial record. *Ex parte Tom Tong*, 108 U.S. 556, 559–60 (1883); *Heflin v. United States*, 358 U.S. 415, 418 n.7 (1959). That inversion rendered every subsequent denial a function of the error rather than a correction of it.

REASON FOR NOT MAKING APPLICATION TO THE DISTRICT COURT OF THE DISTRICT IN WHICH THE APPLICANT IS HELD

As applied to Petitioner, the district court is not the proper venue to determine the judicial misconduct of the judges of the circuit court that oversees it. The Northern District of Ohio and the Sixth Circuit Court of Appeals are the courts whose own judges and prosecutors committed the misconduct at issue. The proper venue is the Supreme Court of the United States, which has original habeas jurisdiction and supervisory authority over the entire federal judicial system.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to grant the writ of habeas corpus pursuant to 28 U.S.C. § 2241; the saving clause of 28 U.S.C. § 2255(e) authorizes Petitioner to proceed by habeas petition because the § 2255 remedy was rendered “inadequate and ineffective to test the legality of his detention.” This Court also has jurisdiction under 28 U.S.C. § 1651(a), the All Writs Act, and has jurisdiction to vacate the criminal judgment and order the superseding indictment dismissed with prejudice pursuant to 28 U.S.C. § 2106. The writ is in aid of this Court's appellate jurisdiction over the Sixth Circuit and the NDOH. As applied to the Petitioner, exceptional circumstances warrant the exercise of this Court's discretionary power: judicial misconduct during the execution of Petitioner's sentence, combined with the structural failure of the § 2255 remedy, has foreclosed all available avenues of relief in the lower courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The full text of all relevant provisions is set forth in Appendix B.

STATEMENT OF THE CASE

A. The Affidavit, the Choice of Court, and the Timing of Filing (June 2016)

On June 3, 2016, Oregon state law enforcement arrested Petitioner on a local warrant and held him at the Multnomah County Detention Center in Portland, Oregon. On June 13, 2016, FBI Special Agent Monica Hantz, assigned to the Cleveland Field Office, learned that Petitioner was scheduled to be released from Oregon custody the following day. App. JJ, Exhibit 1, a.210–211. On June 14, 2016 — the day of Petitioner's scheduled release — SA Hantz filed a criminal complaint and sworn affidavit in the United States District Court for the Northern District of Ohio, not in

the District of Oregon where Petitioner was in custody and where the alleged conduct occurred. App. C, a.8–15.

On that same day, SA Hantz was in communication with AUSA Om Kakani about the status of Petitioner's release from Oregon custody. App. LL, Exhibit 3, a.213. A federal arrest warrant issued from the NDOH. A detainer was lodged with the Multnomah County Sheriff's Office before Petitioner's release, preventing him from being freed. App. KK & LL, Exhibits 2 & 3, a.212–213. Petitioner was taken into federal custody and transported to Ohio.

Paragraph 13 of the affidavit stated the June 2, 2016 communication “was received by a server in Beachwood, Ohio,” identifying domain etn.com and IP address 151.110.126.183, both registered to Eaton Corporation. App. C, a.13. This statement was the sole geographic nexus connecting the alleged offense to the NDOH — without it, the affidavit identified conduct originating in Oregon directed to recipients whose Eaton email addresses were registered to a corporation, but supplied no Ohio connection. Eaton Corporation's own published case study establishes the location statement was false as its data centers have been located in or near Louisville, Kentucky since 2011, becoming operational in 2012 — four years before SA Hantz's affidavit. App. SS, Exhibit 10, a.228–229. The case study is publicly available at:

<https://www.eaton.com/content/dam/eaton/products/backup-power-ups-surge-it-power-distribution/backup-power-ups/bladeups/blue-grass-data-center-successstory-cor194css.pdf> (last visited August 12, 2026).

The government's primary Eaton contact throughout the investigation was Matthew Coberly, Eaton's Head of Corporate Security and a 27-year FBI special agent before joining Eaton, and who the government was in constant communication with from

the inception of the investigation. App. P, a.54–66. The domain etn.com and IP address 151.110.126.183 identified in Paragraph 13 were publicly registered to Eaton Corporation, and the geographic location of the associated servers was information accessible through standard investigation of that registration.

B. The Indictment Built on the False Server Location Allegation (2016)

On August 24, 2016, the government filed a three-count indictment in the NDOH charging: Count 1, cyberstalking in violation of 18 U.S.C. § 2261A(2)(B); Count 2, threatening communications in violation of 18 U.S.C. § 875(c); and Count 3, threatening communications in violation of 18 U.S.C. § 875(c). App. D, a.16–21.

Paragraphs 7 and 14 of the indictment, and the charging language of Counts 2 and 3, expressly alleged that Petitioner's emails “were routed or traveled to Eaton's data centers located in the” Northern District of Ohio. App. D, a.16–21. These allegations tracked the false server-location claim from Paragraph 13 of SA Hantz's affidavit directly into the charging document. Petitioner was arraigned on September 19, 2016.

C. The Speedy Trial Waivers and the Pretrial Period — 669 Non-Excluded Days (October 2016–February 2019)

Between October 2016 and February 2018, Petitioner and his counsel signed four speedy trial waivers, each reciting the identical justification: that “the failure to grant a continuance would deny counsel for the Defendant... the reasonable time necessary for effective preparation.” App. E–H, a.22–29. These were Petitioner's waivers, signed by him and his counsel, premised on the belief that there was a legitimate case in the NDOH requiring preparation — a belief induced by the government's false representation about the server location.

At voir dire on February 26, 2019, immediately before trial commenced, AUSA Riedl confirmed the following on the record: that the government had “repeatedly” sought a guilty plea from Petitioner throughout the pretrial period, and had “repeatedly heard back that Mr. Hagar was not interested in any plea agreement; that he only wished to have a trial.” App. N, a.52.

On May 30, 2018, at a hearing on Petitioner's motion to replace counsel, Judge Nugent asked AUSA Riedl: “I would assume that you're prepared to go forward if we were to start trial on Monday?” AUSA Riedl answered: “Yes, Your Honor.” App. I, a.30. The court did not make any exclusion of time finding or toll the Speedy Trial Act clock at that hearing. Fifty-one non-excluded days elapsed between the May 30, 2018 hearing and September 6, 2018, when defense counsel filed a motion for a continuance.

Around July 2018, the government had approached defense counsel asking for a stipulation that the server was in the NDOH; Petitioner refused. The September 6, 2018 motion for continuance was filed after the government informed defense counsel that Eaton's server was not located in the NDOH — a disclosure that occurred that the server was in the NDOH and Petitioner refused. As set forth in Appendix II, a.208–209, at least 669 non-excluded days elapsed between Petitioner's August 24, 2016 indictment and his February 26, 2019 trial.

D. The Government's Concealment and the Superseding Indictment (2018)

On September 11, 2018, the government filed a superseding indictment — approximately two years after indictment — silently removing every reference to the server. App. J, a.31–36. The superseding indictment did not explain the removal, did

not identify any substitute venue theory, and was filed without any motion or disclosure to the court explaining why the allegations in the original indictment had been abandoned. Petitioner was arraigned on the superseding indictment on September 19, 2018.

On September 11, 2018 — the same day — Petitioner sent his attorney Mr. Jenkins a letter identifying Paragraph 13 of the affidavit, the three Clackamas County Sheriff's Office reports establishing the emails were received by Eaton's HR Director Ryan Keen outside the NDOH, and the relevant portion of *United States v. Jefferson*, 674 F.3d 332 (4th Cir. 2012), dealing with improper venue for wire fraud. App. MM, Exhibit 4, a.214–215. Petitioner's attorneys responded in writing that the information Petitioner had identified was “not relevant.” App. NN, Exhibit 5, a.216. In late November 2018 or early December, Petitioner separately drafted and mailed an unfiled motion to replace counsel identifying these failures and others. App. OO, Exhibit 6, a.217–222.

E. Trial Testimony Establishing No Email Reached the NDOH (February–March 2019)

Matthew Coberly, Eaton's Head of Corporate Security and a former 27-year FBI special agent, testified at trial. Coberly testified that all emails sent from outside Eaton to Eaton employee email addresses were intercepted by Eaton's security system and automatically redirected to a monitored mailbox before they could be delivered to the addressed recipient. App. P, a.54–66. Coberly testified that the monitored mailbox was controlled by Ryan Keen, Eaton's Director of Human Resources. *Id.* Coberly testified on redirect examination that he believed Keen

“currently resides in South Carolina.” App. P, a.65–66. The Clackamas County Sheriff's Office report GO 10 2015-34425 lists Keen's address as NC (North Carolina). App. PP, a.223–224.

Cynthia Burke, an Eaton employee, testified on direct examination. The government asked her: “Now, at the time that all these e-mails we just went through — so not the Facebook messages but the Exhibits 125 through 138 that you've just looked at — at the time that they were sent, did you actually review them?” Burke answered: “No.” The government then asked: “Okay. So you reviewed them at a later date?” Burke answered: “Yes.” The government then asked: “And where would you have received e-mails addressed to you at Eaton?” Burke answered: “In Beachwood, Ohio.” App. Q, a.72.

On cross-examination, Burke testified as follows regarding when she first saw the emails at issue: “Q: When was the first time that you saw these e-mails that you just reviewed with the Government in your capacity at Eaton Corporation? A: When the District Attorney showed them to me. Q: And when would that have been? A: 2018. Q: So prior to 2018, you had no knowledge that Mr. Hagar had sent any of these emails to your Eaton e-mail address, is that correct? A: That's correct.” App. Q, a.74. The government's own Appellee Brief on direct appeal stated: “C.B. read the messages Hagar sent to her Eaton work email account for the first time during preparation for her trial testimony.” App. W, a.97. Petitioner's Appellant Brief on direct appeal stated: “C.B. ... testified that she never received any of the emails.” App. V, a.88.

Burke also testified regarding her relationship to the alleged cyberstalking victim,

Rebecca Gentle. Burke testified: “Karen married Al Gentle and had two daughters, so I would be her step-aunt.” App. Q, a.75–76. Burke resides in Ohio. Rebecca Gentle resides in Oregon. App. R, a.79–80.

At the close of the government's case, defense counsel Marisa Serrat moved for a judgment of acquittal, arguing the court lacked “jurisdiction over the offense.” App. S, a.81–83. Counsel did not frame the motion as a venue objection and did not use the word “venue.” Counsel did not request a jury instruction on venue. During closing argument, Serrat told the jury: “There is no direct connection to this case and the Northern District of Ohio.” AUSA Riedl objected: “That's not in the statement of facts.” App. T, a.84–85; see App. M, a.49–51 (government's trial Statement of the Case, which did not address venue). The jury convicted on all three counts on March 1, 2019.

Judge Nugent sentenced Petitioner on June 7, 2019 to 180 months — three consecutive 60-month terms. At sentencing, Judge Nugent stated: “I don't see any assurance that if you were on the street, the public would be protected at all. In fact, I see just the exact opposite.” App. U, a.86.

F. Direct Appeal: The Addition To and Distortion of the Evidence (2020)

Jenkins filed the Appellant Brief on direct appeal. The brief argued improper venue at Appendix pages a.89–93, citing the correct legal standard for venue in communication offenses, identifying Ryan Keen's location outside the NDOH, and arguing the NDOH was not the proper district. App. V, a.89–93. A footnote in the same brief, at page a.87, characterized the argument as one of “lack of jurisdiction.” App. V, a.87, fn. 1. In the proceedings below — at the motion to dismiss (App. K, a.40–

41), at the motion for judgment of acquittal (App. S, a.81–83), and at every other preservation point — Jenkins had used the word “jurisdiction” rather than “venue.” For the speedy trial claim on appeal, Jenkins did not argue the venue-linked theory set out in the motion to dismiss. Instead, Jenkins argued only that 125 days had elapsed between the superseding indictment arraignment on September 19, 2018 and the motion to dismiss on January 22, 2019. App. V, a.94–96, Appendix K, a.37-a.41. On August 3, 2020, the Sixth Circuit affirmed. *United States v. Hagar*, 822 F. App'x 361 (6th Cir. 2020). The panel held that the venue claim had been forfeited because it had never been properly raised as a venue claim in the proceedings below. *Id.* at 370; App. X, a.105–106. The panel also stated — adding to and distorting the evidence — in the same paragraph in which it found forfeiture: “Hagar sent threatening emails to C.B.'s Eaton email address. She received and reviewed them at her office in Beachwood, Ohio. Thus, venue was proper.” *Id.* at 370; App. X, a.106. The panel also stated, as justification for proper venue for count 1, “Additionally, Count 1 of the superseding indictment referenced those messages because R.G., the cyberstalking victim was related to C.G. (sic).” *Id.* at 370 n.5; APP. X, a.106, note 5. The panel also held that the speedy trial argument Jenkins raised on appeal was “different and contradictory to the argument he made before the district court” and declined to consider it. *Id.* at 369; App. X, a.104. The panel found there was “not a whiff of prosecutorial bad faith” regarding the speedy trial claim. *Id.*; App. X, a.104.

G. Section 2255 and Collateral Review: The Addition to and Distortion of the Evidence Adopted as Binding Truth (2021–2022)

Petitioner filed a motion under 28 U.S.C. § 2255 on August 16, 2021, raising:

ineffective assistance of trial and appellate counsel; prosecutorial misconduct; speedy trial violations; and improper venue. App. Y, a.108–127. Petitioner submitted the three Clackamas County Sheriff's Office reports and cited trial transcript pages establishing the testimony of Coberly and Burke in the Reply. App. AA, a.141–161. He moved for discovery of the June 2, 2016 email with complete header information identifying the routing path of the communication identified in Paragraph 13 of SA Hantz's affidavit. App. BB, a.162–173.

AUSA Riedl filed the government's response. App. Z, a.128–140. The response did not admit or deny the prosecutorial misconduct allegation. It did not address the specific trial transcript citations Petitioner had identified. It did not produce or acknowledge the June 2, 2016 email header. It invoked procedural bar and relied on the Sixth Circuit's direct appeal opinion.

Judge Nugent denied the § 2255 motion without an evidentiary hearing on February 2, 2022. App. EE, a.188–197. In denying discovery of the June 2, 2016 email header, Judge Nugent's order acknowledged that the email “would have established [Petitioner's] burden of proof for his second motion to dismiss and would have demonstrated that venue was improper” and “would support his claims of prosecutorial misconduct and ineffective assistance.” App. EE, a.190–195. The order did not address Petitioner's ineffective assistance claim regarding Burke's status as an immediate family member of Gentle. The order denied a certificate of appealability.

The Sixth Circuit denied the COA request. Judge Clay's order addressed the merits of Petitioner's ineffective assistance claims before determining whether a certificate

of appealability should issue, relying on the addition to and distortion of the evidence. App. FF, a.198–205. Chief Judge Sutton and Judges Guy and Cole denied panel rehearing. App. GG, a.206. The full court declined en banc review. App. HH, a.207. Petitioner filed two petitions for certiorari to this Court, both of which were denied.

REASONS FOR GRANTING THE WRIT

I. JUDICIAL MISCONDUCT DURING THE EXECUTION OF PETITIONER'S SENTENCE RENDERED THE § 2255 REMEDY INADEQUATE AND INEFFECTIVE BECAUSE PETITIONER WOULD HAVE PREVAILED ON HIS INEFFECTIVE ASSISTANCE CLAIMS

“To prevail on a judicial misconduct claim a party must show that (1) the judge acted improperly, (2) thereby causing him prejudice.” *United States v. Marquez-Perez*, 835 F.3d 153, 158 (1st Cir. 2016). Both elements are established here. The misconduct occurred at four successive stages after the imposition of sentence, each building upon the prior and each resting on the same manufactured fact. The misconduct is not simply that judges made errors; it is that judges engaged in a course of conduct with a continuity of purpose — relying on a manufactured fact rather than the trial record — that denied Petitioner the fair administration of justice and rendered his § 2255 remedy inadequate and ineffective. “[T]he concern of due process is with the fair administration of justice.” *Mayberry v. Pennsylvania*, 400 U.S. 455, 465 (1971). “[T]he administration of justice includes everything connected with the determination of rights of person and property, every agency provided by law for the accomplishment of that purpose, and every step in the proceeding... according to the established law of the land.” *Rosner v. United States*, 10 F.2d 675, 676 (2d Cir. 1926).

A. Direct Appeal: Manufacturing a Fact After Finding Forfeiture

Judicial misconduct occurs when judges “perform acts categorically beyond their

authority,” including when they “add to or distort the evidence.” *Marquez-Perez*, 835 F.3d at 158 (citing *Quercia v. United States*, 289 U.S. 466, 470–71 (1933)). A judge “may analyze and dissect the evidence, but he may not either distort it or add to it.” *Quercia*, 289 U.S. at 470.

The panel first found the venue claim forfeited. Having found forfeiture, the panel had no authority to decide the merits. *Musacchio v. United States*, 577 U.S. 237, 249 (2016). It proceeded anyway — transforming Burke's direct examination testimony into the historical fact that she “received and reviewed” the emails in Beachwood. The full context of Burke's testimony at App. Q, a.72 makes the fabrication clear: immediately before the conditional question, Burke was asked whether she “actually reviewed” the charged emails “at the time that they were sent” — and answered “No.” The government then asked whether she reviewed them “at a later date” — she answered “Yes.” Only then did the government ask the conditional: “And where would you have received e-mails addressed to you at Eaton?” Burke answered “In Beachwood, Ohio.” The panel converted a conditional hypothetical answer — asked immediately after Burke confirmed she had not reviewed the emails when sent — into a historical finding of receipt and review. That transformation contradicts the predicate statement that immediately preceded the answer on which it purports to rest.

Under settled law, “the record of the trial court is not open to collateral attack, but imports absolute verity.” *Riddle v. Dyche*, 262 U.S. 333, 336 (1923). The trial record — Burke's direct examination at App. Q, a.72 and cross-examination at App. Q, a.74 — imports that absolute verity. The panel did not find a fact in the record; it added

to and distorted the record. Both parties' briefs acknowledged Burke first saw the emails in 2018 during trial preparation. The panel's statement was not an inference from the evidence; it was an addition to it — and an addition contradicted by the very testimony on which it purported to rest.

This Court has established that alternative holdings bind only when the question was: (1) properly presented; (2) fully argued; and (3) elaborately considered. *Florida Cent. R.R. Co. v. Schutte*, 103 U.S. 118, 143 (1881); *Massachusetts v. United States*, 333 U.S. 611, 623 (1948). The panel's venue discussion fails all three criteria: the claim was never preserved as a venue claim; the full factual record was never developed; and three sentences citing one case is not elaborate consideration. The venue discussion is dicta. Judge Clay's determination that it established law of the case was itself an act beyond his authority — relying on dicta to foreclose claims that had never been properly adjudicated.

The panel's addition to and distortion of the evidence was not limited to the Beachwood receipt fact. In footnote 5 of its opinion, the panel also characterized Burke as Gentle's “immediate family member” for purposes of 18 U.S.C. § 2261A(2)(B). *Hagar*, 822 F. App'x at 370 n.5; App. X, a.106, note 5. That characterization ignored the statutory requirement under 18 U.S.C. § 115(c)(2)(B) that an immediate family member must live in the same household — a requirement the trial record forecloses because Burke lives in Ohio and Gentle lives in Oregon. App. Q, a.75–76; App. R, a.79–80. That pattern — inventing a receipt fact and then inventing the relationship that explains why the receipt location matters — confirms this was not isolated error but a course of conduct with a continuity of purpose.

Ground II.D addresses counsel's failure to challenge this at trial; the Sixth Circuit's adoption of it on appeal is treated here as a second independent addition to and distortion of the evidence.

The manufactured fact performed a second, equally consequential function: it provided the factual predicate for the panel's conclusion that “there is not a whiff of prosecutorial bad faith” on the speedy trial claim. Hagar, 822 F. App'x at 369; App. X, a.104. That conclusion was only possible because the panel had manufactured the fact that Burke received the emails in Beachwood — which made the NDOH appear to be the proper court, and which made the two-year delay appear to be legitimate defense preparation rather than the product of a false affidavit in the wrong court. Against the actual record — a government that filed a false affidavit in the wrong court on the day of Petitioner's scheduled release, concealed the server location for two years while repeatedly seeking a guilty plea, and declared readiness for trial on May 30, 2018 while that concealment was ongoing — a conclusion of no prosecutorial bad faith was not available. The manufactured fact thus foreclosed both venue and the STA bad faith finding in a single stroke. No court has ever examined whether dismissal with prejudice was warranted under the Sylvester factors against the actual record of what the government did.

B. Section 2255: Adjudicating the Appellate Record Instead of the Trial Record

Section 2255(b) requires the court to “determine the issues and make findings of fact and conclusions of law.” Rules Governing Section 2255 Proceedings Rule 8 requires review of “transcripts and records of prior proceedings.” Judge Nugent satisfied neither requirement. He accepted the manufactured fact as established truth despite

Petitioner's specific demonstrations — with trial transcript citations, the government's own Appellee Brief at App. W, a.97, and the Clackamas County reports — that it was false. He denied discovery of the document he acknowledged would prove venue was improper and would support the prosecutorial misconduct claim. He did not address the Burke immediate family claim. AUSA Riedl never denied the misconduct allegation — he relied on the manufactured fact while possessing the Clackamas County reports that directly contradicted it. *Mooney v. Holohan*, 294 U.S. 103, 112–13 (1935). This conduct satisfies both *Marquez-Perez* elements: (1) the judges acted improperly by relying on the appellate record rather than making independent factual findings from the trial record; and (2) Petitioner suffered prejudice — each denial of his § 2255 claims rested on the manufactured fact rather than the trial testimony that contradicts it.

C. Certificate of Appealability: Deciding the Merits Without Jurisdiction

This Court has held that a court of appeals that “sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits... is in essence deciding an appeal without jurisdiction.” *Miller-El v. Cockrell*, 537 U.S. 322, 336–37 (2003). Judge Clay did precisely this — determining the merits of Petitioner's venue claim and applying it to the ineffective assistance claims before deciding whether a COA should issue, then denying the COA based on that adjudication, in reliance on the manufactured fact. App. FF, a.198–205. This Court identified this precise error as exceeding judicial authority in *Buck v. Davis*, 580 U.S. 100 (2017). These were acts categorically beyond his authority at the COA stage.

D. Prejudice: Petitioner Would Have Prevailed on His IAC Claims

The question this Court must ask is not whether the lower courts went through the motions of considering Petitioner's ineffective assistance claims — they did — but whether those considerations were based on the actual trial record or on the manufactured fact. The answer is unequivocal: every denial rested on the manufactured fact. No court independently examined the trial transcript to determine what Burke actually testified. The trial record imports absolute verity. Riddle, 262 U.S. at 336. Every court that accepted the panel's characterization in place of the trial transcript treated a fabricated fact as more authoritative than the record the law commands courts to respect. That inversion is the heart of the prejudice.

But for Judges Surheinrich, Gibbons, and Bush adding to and distorting the evidence when they manufactured the fact that Burke received and reviewed Petitioner's emails, Petitioner would have demonstrated the government never had evidence the emails traveled to or through the NDOH, and the superseding indictment would have been dismissed with prejudice. The manufactured fact denied the fair administration of justice and the Equal Protection of the Laws. *Caldwell v. State of Texas*, 137 U.S. 692, 697 (1891). Ground II demonstrates why Petitioner would have prevailed had the actual trial record been examined.

II. THE CONSOLIDATED INEFFECTIVE ASSISTANCE CLAIM: A UNIFIED PATTERN OF FAILURES THAT DESTROYED PETITIONER'S ONLY VIABLE DEFENSES

This petition satisfies the standard this Court has established for evaluating counsel's failures. Under *Strickland v. Washington*, 466 U.S. 668, 687 (1984),

deficient performance is demonstrated by what Jenkins demonstrably knew — the correct venue argument he made on appeal at Appendix pages a.89–93 of his own Appellate Brief — versus what he did at every stage where preservation required the correct label: “jurisdiction” instead of “venue,” at the motion to dismiss, the motion for judgment of acquittal, and the Appellate Brief footnote. Prejudice is mathematical, not speculative: had venue been properly preserved, either dismissal or transfer would have required new counsel in a new forum; the STA clock had already consumed 669 non-excluded days against a 70-day limit; dismissal with prejudice under § 3162(a)(2) was the only lawful outcome. The chain from counsel's failures to Petitioner's conviction runs without a break.

The five failures documented below are not isolated mistakes. They form a unified pattern operating to the same end at every stage — each one ensuring that Petitioner's most legally certain defense was never preserved at the stage where preservation would have mattered: counsel failed to investigate the false venue predicate; substituted “jurisdiction” for “venue” at every critical filing; abandoned the venue-linked STA argument on appeal; failed to establish Burke is not an immediate family member; and failed to request a ruling on the motion to dismiss.

A. Failure to Investigate the False Venue Predicate and Obtain the June 2, 2016 Email Header

Paragraph 13 of SA Hantz's affidavit stated the June 2, 2016 communication “was received by a server in Beachwood, Ohio.” That statement was the sole basis in the affidavit for filing in the NDOH. App. C, a.13. Without it, the affidavit establishes that Petitioner — located in Oregon — sent emails to recipients whose Eaton addresses were registered to a corporation, but supplies no Ohio connection. The

server-location statement was a venue predicate, not a criminal element — it placed the offense in a specific district. Eaton's own published case study demonstrates its data centers have been in Louisville, Kentucky since 2012 — four years before the affidavit. App. SS, Exhibit 10, a.228–229. Through Coberly — a 27-year FBI veteran who was the government's primary Eaton contact throughout the investigation — and through basic investigation of the domain and IP address identified in the affidavit, the geographic location of those servers was ascertainable.

The government withheld the true server location from Petitioner and his counsel for over two years. That information was material to Petitioner's venue defense — it would have revealed that every allegation tying the offense to the NDOH was false, supported a motion to dismiss for improper venue, and provided the predicate for setting aside the STA waivers signed on the premise the case properly belonged in Ohio. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). “Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Strickler v. Greene*, 527 U.S. 263, 280 (1999). A reasonable probability exists here: with the true server location in hand from the outset, a motion to dismiss for improper venue would have been filed pre-trial, triggering the STA/venue chain that leads to dismissal with prejudice.

Petitioner provided Jenkins the complete factual and legal framework on September 11, 2018: the Jefferson case, the Clackamas County reports showing the emails were received by Keen in North Carolina, the IP address analysis, and the specific venue argument. App. MM, Exhibit 4, a.214–215. Counsel responded that the information

was “not relevant.” App. NN, Exhibit 5, a.216. That refusal was deficient performance. The June 2, 2016 email's complete header would have documented the routing path from Oregon through servers outside Ohio to Keen's inbox in the Carolinas — conclusively disproving the government's venue theory. The Clackamas County reports already in defense counsel's possession demonstrated the same point. App. PP, QQ, & RR, Exhibits 7, 8, & 9, a.223–227. A competent attorney armed with that header and those reports would have: (1) moved to dismiss for improper venue before trial; (2) demanded Brady disclosure of the server location; (3) moved to set aside the STA waivers as induced by the false venue predicate; and (4) connected those motions to the 669-day STA violation that made dismissal with prejudice inevitable. There is no plausible strategic rationale for refusing to investigate the one fact on which the entire prosecution's geographic claim rested.

The government's concealment made counsel's preparation futile; counsel's failure to investigate made the concealment permanent. On May 30, 2018 — with the concealment still in place — AUSA Riedl confirmed to Judge Nugent he was ready for trial. App. I, a.30. The government declared readiness while withholding the fact that its venue theory had no evidentiary foundation. The government used the extended waiver period as a vehicle for plea negotiations — AUSA Riedl confirmed at voir dire that the government had “repeatedly” sought a plea and “repeatedly heard back that Mr. Hagar was not interested in any plea agreement; that he only wished to have a trial.” App. N, a.52. In the § 2255 proceedings, AUSA Riedl compounded the misconduct: his response never admitted or denied the prosecutorial misconduct allegation, relying instead on the Sixth Circuit's manufactured fact while possessing

the Clackamas County reports that directly contradicted it. *Mooney v. Holohan*, 294 U.S. 103, 112–13 (1935). Counsel’s failure to obtain the June 2 email header meant Riedl was never confronted with the document that would have forced him to either produce it, concede the false affidavit, or admit misconduct in open court. As a result, Riedl endeavored to “interfere[] with Petitioner’s ability... to make independent decisions about how to conduct the defense.” *Strickland*, 466 U.S. at 686. “[S]tripping away the opportunity to prepare for trial is tantamount to denying altogether the assistance of counsel for the defense.” *United States v. Burton*, 584 F.2d 485, 489 (D.C. Cir. 1979).

B. The “Jurisdiction” Substitution: Forfeiture by Design

Venue and jurisdiction are distinct legal concepts with different preservation requirements. An objection framed as lack of “jurisdiction” does not preserve a venue objection. Jenkins knew this distinction — his own Appellate Brief proves it. Jenkins argued improper venue correctly and competently at Appendix pages a.89–93, citing the correct legal standard for venue in communication offenses. App. V, a.89–93. Yet at every filing where the choice of word determined whether the argument was preserved, counsel used “jurisdiction” instead of “venue”: the January 22, 2019 motion to dismiss, App. K, a.40–41; the motion for judgment of acquittal, App. S, a.81–83; and the Appellate Brief footnote, App. V, a.87, fn. 1. The result was mechanical and foreseeable: the Sixth Circuit found the venue claim forfeited because it had never been properly raised as a venue claim in the proceedings below. *Hagar*, 822 F. App’x at 370. The forfeiture created the factual vacuum the panel then filled with the manufactured fact.

There is no strategic reason to use the wrong legal term for a claim counsel demonstrably knew how to frame correctly. The correct argument was made on appeal — but where preservation had already been lost. The government's own Appellee Brief acknowledged at footnote 6 that the court “could construe” the argument as raising venue “albeit under the wrong label.” App. W, a.99–100. That concession proves the mislabeling was what caused the forfeiture.

C. The Unified Venue and Speedy Trial Claim: Counsel's Failure Guaranteed the Loss of an Inevitable Dismissal With Prejudice

This is the core of the ineffective assistance claim and the center of gravity of the entire petition. It operates as a two-step chain — each link established by the record — and counsel failed at both steps.

Step one: The NDOH was never the proper court. Venue was improper from the moment of indictment. Article III, § 2, cl. 3; Sixth Amendment; 18 U.S.C. § 3237. No e-mail began, continued, or was completed in the NDOH. The government's original venue theory — the Beachwood server — was false and was abandoned. The manufactured fact — that emails were received by Burke in Beachwood — was never proven at trial. The trial record establishes the following uncontested facts, which no court has found inaccurate on independent review of the trial transcript: (1) Petitioner sent emails from Oregon; (2) emails addressed to Eaton employee accounts were intercepted and redirected to a monitored mailbox controlled by Keen — located in North or South Carolina — before delivery to any addressed recipient, App. PP, a.223–224; (3) Burke confirmed on direct examination she did not review the emails at the time they were sent and first saw them in 2018 when the government showed them to her during trial preparation, App. Q, a.72, a.74 & App. W, a.97; (4) Gentle

lived in Oregon and received nothing in the NDOH, App. R, a.79–80; (5) Eaton's data centers were located near Louisville, Kentucky, App. SS, Exhibit 10, a.228–229; (6) the government's original venue theory was silently abandoned by superseding the indictment. Under *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 n.2 (1999), only conduct elements constituting the offense provide proper venue. None occurred in the NDOH. These facts are confirmed by the Clackamas County Sheriff's Office reports. App. PP, QQ, & RR, Exhibits 7, 8, & 9, a.223–227.

Step two: Had counsel pressed the venue objection with the correct label, the NDOH would have dismissed or transferred the case. Either outcome required new counsel in a new forum. New counsel would have needed reasonable time to prepare. The STA clock had already consumed 669 non-excluded days against a 70-day limit — 599 days beyond the statutory maximum. There was no remaining STA time. Dismissal with prejudice under 18 U.S.C. § 3162(a)(2) was the only lawful outcome. A bad faith delay caused by the government “make[s] relief virtually automatic.” *United States v. Doggett*, 505 U.S. 647, 657 (1992); see also *Barker v. Wingo*, 407 U.S. 514, 531 (1972). Prejudice under *Strickland* is therefore mathematical, not speculative.

Defense counsel's own motion to dismiss acknowledged the essential point: “His waivers of Speedy Trial should be set aside as they were signed under the mistaken belief that the federal government had evidence of the emails [which are the subject of this prosecution] having traveled through this Court's jurisdiction.” App. K, a.40. Counsel recognized the waivers rested on a false premise — but failed to follow that recognition to its necessary conclusion, because counsel had not obtained the email header that would have established the premise was deliberately false, not merely

mistaken. The government asked Petitioner to stipulate to the server's NDOH location — a fact it knew was false — as an attempt to retroactively validate the false affidavit through defense consent. Petitioner refused.

On direct appeal, Jenkins compounded the failure by abandoning the venue-linked STA argument entirely and substituting a narrow 125-day argument based only on the post-superseding period. That argument was “different and contradictory to the argument before the district court” — the Sixth Circuit refused to consider it. Hagar, 822 F. App'x at 369; see App. V, a.94–96, compare App. K, a.37–41. The real STA argument — 669 days, induced waivers, venue-linked — was never presented on defaults.

The consequence is one that no court has yet acknowledged: Petitioner's second motion to dismiss for violation of the Speedy Trial Act and Sixth Amendment, App. K, a.37–41, filed January 22, 2019, has never been reviewed on its merits by any court. The district court did not rule on it before trial. On direct appeal, the Sixth Circuit reviewed only the substitute argument Jenkins raised for the first time on appeal — found it “different and contradictory” — and refused to consider it. Hagar, 822 F. App'x at 368–369; see App. V, a.94–96, compare App. K, a.37–41. Every subsequent court treated the STA claim as resolved by the direct appeal — but the direct appeal resolved only Jenkins' substitute argument, not the motion as filed. The motion to dismiss as actually filed — grounded in 669 non-excluded days, venue-linked waivers, and the argument that those waivers should be set aside as induced by a false factual predicate — has never been adjudicated on its merits at any level. When courts consider dismissal with or without prejudice under § 3162(a)(2), the

Sixth Circuit examines whether the delay resulted from “prosecutorial bad faith,” whether there was “any attempt to take advantage of the delay,” and whether “the government engaged in prosecutorial misconduct that must be deterred.” *United States v. Sylvester*, 868 F.3d 503, 512 (6th Cir. 2017). All factors compel dismissal with prejudice: the government filed a false affidavit in the wrong court on the day of Petitioner’s scheduled release; concealed the server location for two years while seeking a plea; asked Petitioner to stipulate to a known falsehood; and superseded the indictment without disclosing that every prior continuance rested on a false premise. *United States v. Carlone*, 666 F.2d 1112, 1116 (7th Cir. 1981) (continuances may be retroactively revoked “where the government had procured a continuance by deliberate misrepresentation”). “No continuance under subparagraph (A) of this paragraph shall be granted because of... lack of diligent preparation[.]” 18 U.S.C. § 3161(h)(7)(C). No court has ever applied the *Sylvester* factors against the actual record of what the government did.

D. Failure to Establish Burke Is Not an Immediate Family Member of Gentle

The Sixth Circuit’s reliance on Burke’s status as an “immediate family member” was not merely an alternative ground for affirming Count 1 — it was a necessary corollary to the Beachwood fabrication. Having invented the premise that Burke received and reviewed emails at her Ohio office, the court needed to explain why her Ohio location mattered to venue for count 1. The “immediate family member” theory supplied that justification: if Burke qualified as an immediate family member of the cyberstalking victim, her Ohio presence connected the offense to the NDOH. But this theory, like the Beachwood receipt claim, was an addition to and distortion of the evidence. The

trial record imports absolute verity. *Riddle v. Dyche*, 262 U.S. 333, 336 (1923). That record established that Burke lived in Ohio and Gentle lived in Oregon App. Q, a.75–76; App. R, a.79 — they could not possibly live in the same “household” as the statute requires. By inventing both the “receipt” fact and the “immediate family member” relationship, the Sixth Circuit constructed an entirely fictional venue foundation irreconcilable with the trial record. Hagar, 822 F. App'x at 370 n.5; App. X, a.106, note 5.

Count 1, cyberstalking, requires that the victim or an “immediate family member” suffer substantial emotional distress. 18 U.S.C. § 2261A(2)(B). “Immediate family member of individual means any other person living in his household and related to him by blood or marriage.” 18 U.S.C. § 115(c)(2)(B). Burke testified she is Gentle's step-aunt: “Karen married Al Gentle and had two daughters, so I would be her step-aunt.” App. Q, a.75–76. Burke lives in Ohio; Gentle lives in Oregon. They do not share a household. A step-aunt in a different state does not satisfy the statutory definition — Gentle is not cohabitating with someone related to her by blood or marriage.

Petitioner raised this issue in his September 11, 2018 letter to Jenkins and in the unfiled motion to replace counsel. App. MM; App. OO, Exhibit 6, a.217–222. Serrat raised it in the motion for judgment of acquittal — framed as “jurisdiction” rather than a statutory element challenge — and did not request a jury instruction on this ground or preserve it on appeal. A purely statutory argument requiring no investigation beyond reading the definition and comparing it to the testimony was raised where it could not succeed and dropped where it had to be preserved. Without Burke, there is no qualifying immediate family member in the NDOH, and Count 1

fails on the statutory elements.

E. Failure to Request a Ruling on the Motion to Dismiss

Defense counsel filed a motion to dismiss for violation of the Speedy Trial Act and Sixth Amendment on January 22, 2019. App. K, a.37–41. The district court did not rule on it before trial. Counsel had an affirmative obligation to press for a ruling before trial commenced — the failure to do so is itself deficient performance, independent of the merits of the motion. The consequence of that failure is established in Ground II.C above: the motion as filed has never been reviewed on its merits by any court at any level. Had counsel obtained a ruling, the 70-day limit exceeded by 599 days would have required dismissal; the government's pervasive misconduct in obtaining continuances on a false factual basis would have compelled dismissal with prejudice. This is an independent and sufficient ground of deficient performance with direct, quantifiable prejudice: the strongest statutory defense Petitioner had was never heard.

Considered together, the five failures form a complete picture. Counsel received the correct legal framework, the relevant case law, and the documentary evidence in September 2018, from Petitioner himself. Counsel demonstrated in the Appellate Brief the ability to make the correct venue argument. At every stage where the correct argument would have preserved Petitioner's strongest defenses — the investigation of the false venue predicate, the venue objection properly labeled, the STA/venue dismissal chain, the immediate family argument, and the ruling on the motion to dismiss — counsel made the wrong choice or no choice. The adversary process as applied to Petitioner satisfies the Strickland standard in full: deficient performance is proved by what Jenkins knew versus what he did; prejudice is mathematical and

unbroken from counsel's failures to Petitioner's conviction.

III. THE § 2255 REMEDY WAS RENDERED INADEQUATE AND INEFFECTIVE: THE DISTRICT COURT TREATED AN INDEPENDENT CIVIL ACTION AS A CONTINUATION OF THE CRIMINAL CASE, DENYING PETITIONER THE INDEPENDENT FACTUAL ADJUDICATION THE LAW REQUIRES

The writ of habeas corpus is “the remedy which the law gives for the enforcement of the civil right of personal liberty.” *Ex parte Tom Tong*, 108 U.S. 556, 559 (1883). The judicial proceeding under it “is not to inquire into the criminal act which is complained of, but into the right to liberty notwithstanding the act.” *Id.* Critically — and this is the structural principle that the § 2255 court violated — a habeas petition “is not a proceeding in that prosecution. On the contrary, it is a new suit brought by him to enforce a civil right, which he claims, as against those who are holding him in custody, under the criminal process.” *Id.* at 559–60. This Court confirmed that a motion under § 2255 “is not a proceeding in the original criminal prosecution, but an independent civil suit.” *Heflin v. United States*, 358 U.S. 415, 418 n.7 (1959).

These foundational principles carry direct, concrete consequences. As an independent civil proceeding to enforce the civil right of personal liberty, the § 2255 motion entitled Petitioner to independent factual inquiry from the trial record. The Sixth Circuit's manufactured characterization of Burke's testimony was not “the record” for purposes of that independent civil suit — it was the product of the very proceeding Petitioner was challenging. *Riddle v. Dyche*, 262 U.S. 333, 336 (1923), establishes that “the record of the trial court is not open to collateral attack, but imports absolute verity.” The record that imports absolute verity is the trial court record — Burke's testimony as transcribed in the proceedings below. That record contradicts the panel's

characterization at every point. It is the panel's statement, not the trial record, that represents a departure from absolute verity. The § 2255 court's statutory obligation under § 2255(b) — to “determine the issues and make findings of fact and conclusions of law” — required examination of the trial transcript itself, not deference to the appellate court's addition to and distortion of what that transcript showed. “The present procedure in habeas corpus was adequate so long as the court hearing the application was held bound by the record made on the trial of the prisoner.” *Robinson v. Swope*, 197 F.2d 633, 634 (9th Cir. 1952) (quoting the Report of the Habeas Corpus Committee submitted at the 1943 Session of the Judicial Conference). The court must be bound by the trial record — not by the appellate court's addition to and distortion of it.

First: the government failed to respond to the allegations as required. Rules Governing Section 2255 Proceedings Rule 5(b) requires the answer to “address the allegation[s] in the motion.” AUSA Riedl never admitted or denied the prosecutorial misconduct allegation — he invoked procedural bar while possessing the Clackamas County reports that contradicted the manufactured fact. The district court resolved the unjoined factual dispute against Petitioner without a hearing, denying the “procedures for an adequate inquiry” required by *Bracey v. Gramley*, 520 U.S. 899, 908–09 (1997).

Second: discovery of the dispositive document was denied on circular reasoning. Rule 6 authorizes discovery “for good cause shown.” Judge Nugent acknowledged the June 2, 2016 email “would have established [Petitioner's] burden of proof for his second motion to dismiss and would have demonstrated that venue was improper” and

“would support his claims of prosecutorial misconduct and ineffective assistance.” App. EE, a.190–195. Despite these concessions, discovery was denied because the misconduct claim was procedurally barred. The document was withheld because the factual dispute was deemed resolved; the factual dispute was deemed resolved because the document was withheld.

Third: the district court made no independent findings of fact from the trial transcript. Section 2255(b) required the court to “determine the issues and make findings of fact and conclusions of law.” Rules Governing Section 2255 Proceedings Rule 8 requires review of “transcripts and records of prior proceedings.” Despite Petitioner’s specific demonstrations — with transcript citations, the government’s own Appellee Brief at App. W, a.97, and the Clackamas County reports — that the manufactured fact was false, Judge Nugent accepted it without independently reviewing the trial transcript. Where “material facts were not adequately developed” and “the fact-finding procedure employed by the court was not adequate to afford a full and fair hearing,” an evidentiary hearing is required. *Townsend v. Sain*, 372 U.S. 293, 313 (1963). “Where there is a factual dispute, the habeas court must hold an evidentiary hearing to determine the truth of the petitioner’s claims.” *Turner v. United States*, 183 F.3d 474, 477 (6th Cir. 1999). Petitioner never received one.

Fourth: the COA court decided the merits without jurisdiction. By determining the merits of Petitioner’s venue claim and applying them to the IAC claims before deciding whether a COA should issue — and justifying the COA denial based on that adjudication — Judge Clay decided Petitioner’s appeal without jurisdiction. *Miller-El*, 537 U.S. at 336–37; *Buck v. Davis*, 580 U.S. 100 (2017).

The statutory text of § 2255(e) confirms the structural violation. Congress used two distinct words — “inadequate” and “ineffective” — not one. Under *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883), it is the duty of the court to give effect to every clause and word of a statute; a construction that renders any part superfluous is disfavored. *Hibbs v. Winn*, 542 U.S. 88, 101 (2004). The word “ineffective” was also included in 28 U.S.C. § 2254(b)(1)(B)(ii), enacted the same day — June 25, 1948, Ch. 646, 62 Stat. 967 — which preserves federal habeas jurisdiction when “circumstances exist that render such process ineffective to protect the rights of the applicant.” Under *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 319 (2014), identical words in the same Act bear the same meaning. The 1947 Judicial Conference Report confirmed at page 18 that the predecessor phrase “no adequate remedy” meant “the absence of state corrective process or the existence of exceptional circumstances rendering such process ineffective to protect the rights of the prisoner.” The § 2255 proceeding here was neither adequate nor effective to test. The legislative definition of “adequate,” confirmed in the 1947 Judicial Conference Report, requires that the process actually protect the rights of the prisoner. A process that adopts a manufactured appellate fact in place of the trial record that imports absolute verity does not protect the rights of the prisoner — it substitutes the error for the correction. Under the ordinary meaning of “test” — to examine judicially, to determine by trial — a proceeding that never examines the trial record has not tested the legality of the detention.

The Jones majority acknowledged that Congress’s saving clause preserves recourse to § 2241 in cases of “unusual circumstances” that make § 2255 “impossible or

impracticable” to use. While the majority rejected the Suspension Clause as a basis for accessing § 2241 for statutory innocence claims barred by § 2255(h), it recognized that the saving clause ensures § 2255 does not displace § 2241 when a prisoner challenges “the legality of his detention” and the statutory remedy is inadequate or ineffective to test that legality. This case presents precisely such unusual circumstances: the Sixth Circuit’s institutional commitment to a manufactured fact has rendered the § 2255 process structurally incapable of testing the lawfulness of Petitioner’s detention. In this case, § 2255 was neither adequate nor effective to test: the § 2255 court treated the motion as a continuation of the criminal case, adopted the manufactured fact without examining the trial transcript it was required by statute to examine, denied the dispositive discovery, and made no independent findings of fact. That is not a mere adverse ruling on the merits. It is a proceeding that never protected the rights of the prisoner or provided fair adjudication of the legality of detention — and therefore was both inadequate and ineffective to test within the meaning § 2255(e) preserved. Petitioner identified the false affidavit, directed counsel to the evidence, filed the § 2255 motion, moved for discovery, requested a COA, petitioned for en banc, and filed two certiorari petitions. He was precluded not by his own default but by the § 2255 court’s structural inversion of an independent civil action into a criminal case continuation.

Martin v. Hiatt, 174 F.2d 350, (5th Cir. 1949) — decided one year after § 2255 was enacted — already understood “inadequate” and “ineffective” as separate conditions operating on the same remedy: “if such a petitioner’s effort were an ineffective test or if he failed to succeed in the Court that had cast the yoke upon him, the right of

appeal would still be his; and if either or both of these efforts should prove inadequate then he should still have access to the great, age-old” writ of habeas corpus. *Id.* at 352. A proceeding that fails to test and a proceeding that is inadequate are distinct conditions — both are present here. Judge Nugent denied the § 2255 motion without an evidentiary hearing, denied discovery, and made no independent findings of fact from the trial transcript.

Congress originally proposed as one of three grounds for federal habeas relief the denial of “fair adjudication of the legality of his detention under the Constitution and laws of the United States.” *Brown v. Allen*, 344 U.S. 443, 448–50 (1953). That ground was eliminated only as a standalone pre-exhaustion pathway — not because it was illegitimate. The Senate Report confirmed it would “always be open to a petitioner to assert in the Federal court after he had exhausted his State remedies or if he had no adequate State remedy.” S. Rep. No. 1559, 80th Cong., 2d Sess., at 9. Petitioner has exhausted every available remedy. The § 2255 court's adoption of the manufactured fact — a factual premise the trial record that imports absolute verity directly refutes — denied Petitioner a full and fair adjudication of the legality of his detention under the Constitution and laws of the United States. *Ex parte Hawk*, 321 U.S. 114, 118 (1944). That is precisely the residual ground Congress preserved and this Court confirmed in *Brown v. Allen*. It is available here. The saving clause of 28 U.S.C. § 2255(e) exists for exactly this situation: where “some limitation of scope or procedure would prevent a Section 2255 proceeding from affording the prisoner a full hearing and adjudication of his claim of wrongful detention.” *United*

States ex rel. Leguillou v. Davis, 212 F.2d 681, 684 (3d Cir. 1954).

The relevant part of 28 U.S.C. § 2255(e) authorizes a federal prisoner whose § 2255 motion was denied to apply for a writ of habeas corpus if “it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.” Petitioner never had a legitimate “test” of “the legality of his detention” — the standard § 2255(e) itself requires. The prisoner must not be left “remediless.”

Ex parte Hawk, 321 U.S. at 118. Without the saving clause, he is.

IV. DENIAL OF THE WRIT SUSPENDS THE PRIVILEGE OF HABEAS CORPUS, DENIES PETITIONER THE ONE FAIR OPPORTUNITY CONGRESS GUARANTEED, AND LEAVES UNCORRECTED A PROCEEDING CONSTITUTIONALLY DEFECTIVE FROM ROOT TO CROWN

The Suspension Clause provides: “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. The writ is the minimum floor of review the Constitution guarantees every prisoner. *Boumediene v. Bush*, 553 U.S. 723, 745 (2008). It is the civil right of personal liberty Tom Tong identified — enforced through an independent civil action that cannot be converted into a continuation of the criminal case without extinguishing that right. When the resulting denials cascade through every level of a circuit institutionally committed to a manufactured fact, that civil right has been extinguished without the rebellion or invasion the Suspension Clause requires. The writ is the remedy for “unjust and illegal confinement.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 207 L. Ed. 2d 427, 441 (2020).

Here, the limitation is not procedural but structural and institutional: the Sixth Circuit has demonstrated, through its manufacture and reliance on the “Beachwood receipt” fact, its inability to provide impartial collateral review. Under these

circumstances, § 2255 is not merely inadequate; it is inaccessible. A collateral review where the reviewing court adjudicates a systematically distorted record is no remedy at all. Where the court reviewing the § 2255 claim cannot access the true trial record — or, worse, has committed to an alternative record — the system itself is defective. A defendant imprisoned under these circumstances is held in direct violation of the Suspension Clause's prohibition. As this Court held in *Ex Parte Yerger*, 75 U.S. 85 (1869), every court of the United States should have power to issue the writ to protect citizens from unlawful imprisonment. When the only court capable of issuing that writ is institutionally committed to a fabricated fact that prevents meaningful review, the writ operates as a nullity. This is precisely the suspension the Constitution forbids.

Jones v. Hendrix, 599 U.S. 465 (2023), did not eliminate the constitutional floor the Suspension Clause guarantees. The majority rejected the Suspension Clause as a basis for accessing § 2241 for statutory innocence claims barred by § 2255(h), but it did not address — and therefore did not resolve — the Suspension Clause's application when the § 2255 process itself is structurally broken by judicial misconduct. The constitutional floor exists independently of *Jones*; it is preserved by the Constitution, not by any judicial holding. *Jones* did not contemplate the case where the sentencing court has already adjudicated the claim on a manufactured fact, the reviewing circuit created that fact and has institutionally committed to it, and no lower court within that circuit can provide untainted review. In that circumstance — this case — the constitutional floor the Suspension Clause guarantees exists only in this Court's original jurisdiction. To deny the writ here is not to channel Petitioner

to another adequate forum — Jones foreclosed that channel by narrowing the saving clause. It is to deny him the constitutional floor the Suspension Clause independently guarantees. The gap between Jones’s narrow statutory saving clause and the Suspension Clause’s independent constitutional guarantee can be filled only by this Court’s original jurisdiction.

Congress enacted AEDPA with the stated intent to ensure “that habeas corpus petitioners have one fair opportunity to present their Federal claims to the Federal courts.” H.R. Rep. No. 101-681, pt. 1, p. 111 (1990); cited in *Jones v. Hendrix*, 599 U.S. 465, 510 n.7 (2023) (Jackson, J., dissenting). Petitioner has exhausted every avenue: two certiorari petitions denied; § 2255 motion denied without a hearing; COA denied; en banc denied. At every stage, the denial rested on the manufactured fact that no witness ever affirmed. The NDOH cannot provide untainted review — it is the court whose conduct is at issue. The Sixth Circuit cannot provide untainted review — it is the court that created the manufactured fact and has institutionally committed to it. If this Court declines original habeas jurisdiction, Petitioner has no forum. That is not one fair opportunity. It is no opportunity at all.

This Court will examine the whole proceeding and act if it finds the trial “a mere mask.” *Moore v. Dempsey*, 261 U.S. 86, 91 (1923). The constitutional defect in this proceeding runs without interruption from the first moment of federal involvement through every stage of review. The arrest warrant issued on a false affidavit filed in the wrong court on the day of Petitioner’s scheduled release — an affidavit whose only Ohio nexus was a materially false server-location statement that placed the case in a district without authority to hear it. The indictment was filed in a district without

constitutional authority to try the case. Petitioner was held in pretrial detention for years in a court without proper venue. The four speedy trial waivers were signed on the premise the case properly belonged in Ohio — a premise the government knew was false and withheld for two years while repeatedly seeking a guilty plea. Trial counsel received the complete legal and factual framework from Petitioner in September 2018 and systematically failed to use it — using “jurisdiction” instead of “venue” at every critical preservation point, abandoning the correct STA argument on appeal, refusing to obtain the dispositive email header, declining to demand Brady disclosure of the server location, and failing to obtain a ruling on the motion to dismiss. Petitioner was tried in a court without constitutional authority. The jury was never instructed on venue. The government proved no element of the offense in the NDOH. The Sixth Circuit panel added to and distorted the trial record with a fact that neither party affirmed, after finding the issue forfeited and without authority to reach the merits. The § 2255 court adjudicated the appellate record rather than the trial record, denied discovery of the document it acknowledged would prove venue was improper, and made no independent findings of fact. The COA court decided the merits without jurisdiction. The full circuit ratified all of it by declining en banc review.

No single link in this chain is accidental. Each failure built upon the prior. The manufactured fact would not exist but for the forfeiture; the forfeiture would not exist but for the “jurisdiction” substitution; the “jurisdiction” substitution would not have mattered but for the failure to obtain the email header; the email header was not obtained because the government concealed the Louisville data center while denying

Brady material and counsel declined to investigate the one fact on which the entire prosecution's geographic claim rested. The chain from false affidavit to 180-month sentence is unbroken. When the independent civil remedy the Constitution guarantees is treated as a continuation of the criminal case and the resulting denial cascades through every level of a circuit that has institutionally committed to a manufactured fact, the independent civil remedy has been extinguished. This Court must restore it.

“There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceeding that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law.” *Harris v. Nelson*, 394 U.S. 286, 292 (1969).

“The procedure under ... section [2255] ‘was intended simply to provide in the sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus in the court of the district where the prisoner was confined.’ *Hill v. United States*, 368 U.S. 424, 427 □ (1962). Of course, events subsequent to the imposition of sentence and which affect its validity may properly be the basis for a habeas corpus proceeding in the district where the prisoner is confined.” *Stirone v Markley, Warden*, 345 F.2d 473, 474–75 (7th Cir. 1965).

As provided above, the proceedings during the execution of Petitioner's sentence affected the validity of his judgment.

This Court's original habeas jurisdiction is not merely appropriate — it is constitutionally required. The saving clause of § 2255(e) is Congress's mechanism for ensuring that channeling prisoners to § 2255 does not suspend the writ. *Reyes-Requena v. United States*, 243 F.3d 893, 901 n.19 (5th Cir. 2001). Neither rebellion nor invasion has occurred. No other justification exists. The Constitution does not

permit what Petitioner has experienced.

CONCLUSION

Petitioner has demonstrated exceptional circumstances warranting this Court's original habeas jurisdiction. Adequate relief cannot be obtained in any other form or from any other court. Petitioner respectfully requests that this Court:

1. Issue a writ of habeas corpus ad subjiciendum directed to Rebecca Krzeminski, Program Manager, Oriana House Inc., Cleveland, commanding production of the body of Petitioner before this Court together with the full cause of his detention, so that the legality of that detention may be examined;
2. Issue a writ of certiorari to the Clerk of the Sixth Circuit Court of Appeals and the Clerk of the District Court for the Northern District of Ohio, commanding certification of the complete trial record — including all transcripts of testimony by Matthew Coberly and Cynthia Burke, all pretrial motions and orders, all speedy trial waivers, and the government's Appellee Brief — for independent review by this Court;
3. Order the government to produce the June 2, 2016 email with complete header information identified in SA Hantz's affidavit at Paragraph 13, App. C, a.13, which the government has withheld and which the district court acknowledged would establish the central factual disputes in this case;
4. Upon independent review of the trial record, vacate Petitioner's conviction and sentence in its entirety and order the superseding indictment dismissed with prejudice, on the grounds that: (a) the arrest warrant was obtained through a materially false affidavit asserting an Ohio server nexus that did not exist, filed in

the wrong court without constitutional or statutory authority to do so; (b) venue was constitutionally and statutorily improper in the NDOH; (c) the Sixth Amendment and the Speedy Trial Act were violated by 599 non-excluded days beyond the statutory limit, with waivers induced by the false venue predicate; (d) Petitioner received constitutionally deficient assistance of counsel across all five unified grounds; (e) the conviction rests on a factual statement no witness ever made; and (f) the proceeding was constitutionally defective at every stage from the warrant through collateral review;

5. In the alternative, assign this matter for a full evidentiary hearing before an Article III judge outside the Sixth Circuit and the NDOH, with instructions to make independent findings of fact from the trial record on all disputed issues, order production of the June 2, 2016 email with header information, and adjudicate all claims on the merits without deference to any prior finding that rested on the manufactured fact;

6. Exercise this Court's supervisory authority over the federal judiciary to address the systematic violations documented herein; and

7. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael A. Hagar". The signature is written in a cursive, flowing style. The first name "Michael" is written in a larger, more prominent script, followed by "A." and "Hagar". The signature is positioned above the printed name and address.

Michael A. Hagar
Oriana House, Inc.
1829 East 55th Street
Cleveland, OH 44103