ALAN WILSON
ATTORNEY GENERAL

April 27, 2017

The Honorable Scott S. Harris
Clerk, Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: State of South Carolina v. Julio Angelo Hunsberger;
No. 16-1126.

Dear Sir:

Enclosed for filing in the referenced matter are forty (40) copies of the State of South Carolina's Reply Brief of Petitioner; a certificate of compliance; and, a certificate of service. Thank you for your assistance in the filing of these documents.

Sincerely,

Melody J. Brown
Senior Assistant Deputy Attorney General

Enclosures

cc: Kathrine H. Hudgins, Appellate Defender (with 3 copies)
The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina (with enclosure)
The Honorable R.S. Hubbard, III, Solicitor, Eleventh Judicial Circuit (with enclosure)
Trisha Allen, Victim Services, Office of the Attorney General, State of South Carolina (with enclosure)

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In the Supreme Court of the United States

STATE OF SOUTH CAROLINA,

Petitioner,

vs.

JULIO ANGELO HUNSBERGER, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

REPLY BRIEF OF PETITIONER
CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Reply Brief of Petitioner contains **1,816** words, according to the Word processing system word count function, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1(d), and including footnotes.

I declare under penalty of perjury that the foregoing is true and correct.

This 27th day of April, 2017.

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I, Melody J. Brown, a member of the Bar of this Court, hereby certify that I have served three (3) copies of the Reply Brief of Petitioner on counsel for Respondent by depositing same in the United States Mail, postage prepaid, and addressed as follows:

Kathrine H. Hudgins, Appellate Defender
South Carolina Commission on Indigent Defense
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This 27th day of April, 2017.

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REPLY BRIEF

In the Brief in Opposition, Respondent Hunsberger submits the Supreme Court of South Carolina correctly found his Sixth Amendment right to a speedy trial was violated by singular reference to his brother's separate case. (See Brief in Opposition, pp. 2 and 7). That summarizes precisely the fundamental error of law in this case – there was no individualized determination based on the facts of Respondent's case. It is fundamentally against the core of this Court's Sixth Amendment speedy trial jurisprudence, and basic concepts of justice, to reverse Respondent's murder conviction for violation of his right to a speedy trial without consideration of the fact that Respondent neither asked for a trial, nor wanted a trial. It is also fundamentally against the core of this Court's Sixth Amendment speedy trial jurisprudence, and basic concepts of justice, to reverse Respondent's murder conviction without consideration of the fact that Respondent acquiesced to the prosecution's expressed order of prosecution to bring the more culpable co-defendant to trial first in capital proceedings. It similarly offends this Court's precedent and basic concepts of justice to grant reversal and bar retrial without consideration of the fact the co-defendant's capital trial schedule was outside the sole authority of the prosecutor to set, and there was no evidence of an intentional delay in order to damage the defense. Justice calls for Respondent to stand responsible for his actions – both for his acquiescence in the order of trial, and, critically, for the murder of Samuel Sturrup.

Petitioner makes the following brief points in reply to the Brief in Opposition:

I.

Respondent's suggestion the Court should deny the petition as presenting a fact-bound question is incorrect. The question presented is a narrowly drawn question of law.

Respondent's suggestion the matter is fact-bound misconstrues the relief sought. Any matter involving a speedy trial question will turn on its facts. However, it is the state supreme court's failure to consider and decide what the individual facts in this case show that is the nub of the complaint. Simply, Respondent should not be allowed to defeat review on an assertion the state court *could* have found the right was violated *had* the state court reviewed and ruled upon the individual facts as required by this Court's precedent.

Indeed, Respondent takes several pages to argue why his case factually could support his right to a speedy trial was violated. (See Brief in Opposition, pp. 12-19). This is an argument to be presented and ruled upon by the Supreme Court of South Carolina. While presented, no such ruling occurred. The State of South Carolina, the victim, his family, and the societal need for equal justice, decry such an unexplained windfall when plainly unmoored to the individual facts of Respondent's case.

Further, Petitioner does not agree with all of the factual assertions and/or inferences therefrom as presented in the Brief in Opposition; however, Petitioner does not bring this case to this Court for consideration of the import of any of the facts offered apart from one – the failure of the Supreme Court of South Carolina to adhere to this Court's precedent in deciding a matter of federal law. At issue is whether a state court applying Sixth Amendment speedy trial jurisprudence must conduct an individualized assessment of the facts and circumstances of the case. *Barker v. Wingo*[1] instructs that it must. Thus, the Supreme Court of South Carolina committed fundamental error in its decision of the federal issue.

Further still, it is not without significance that the South Carolina Court of Appeals and the Circuit Court – the two state courts to consider the facts of record in an individual assessment and ruling – found no error. Even so, and critically, the point of this litigation is to obtain the review Respondent offers – an individual consideration of his speedy trial claim.

In sum, to the extent Respondent attempts to suggest this is a fact-bound issue not appropriate for certiorari review, that assertion is not supported by the record.

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[1] 407 U.S. 514 (1972).

II.

Respondent's suggestion the Court should deny the petition as there is an alternate, state-law basis for the relief, is contrary to the state court's expression it applied only Sixth Amendment law in the case relied upon for reversal.

Respondent also argues the Supreme Court of South Carolina's opinion is based on state court law. (Brief in Opposition, pp. 20-21). This is not supported in the record. The majority opinion by the Supreme Court of South Carolina is as follows:

> We granted certiorari to review the decision of the Court of Appeals, which upheld the denial of Petitioner Julio Hunsberger's speedy trial motion. *State v. Hunsberger*, Op. No. 2014-UP-382 (S.C. Ct. App. filed Nov. 5, 2014). We now reverse. *See State v. Alexander Hunsberger*, Op. No. 27671 (S.C. Sup.Ct. filed October 12, 2016).

(See Petition Appendix, p. 3).

There is no mention of a state court basis relied upon in the ruling. Further, in the *Alexander Hunsberger* opinion, the Supreme Court of South Carolina wrote:

> Alex argues that his right to a speedy trial under both the United States and South Carolina Constitutions was violated, and therefore, his murder charge should be dismissed. ***We analyze the issue under the Sixth Amendment, and agree.***

State v. Hunsberger, 794 S.E.2d 368, 371 (2016) (emphasis added).

It is difficult to quarrel with such a clear expression of intent.

While the state court could have analyzed the matter under the state constitution, S.C. Const. art. 1, § 14, it chose not to do so. Therefore, the Supreme Court of South Carolina was bound to apply this Court's precedent. It did not and fundamental error occurred.

III.

> Respondent attempts to cast his case as factually indistinguishable from those in the Alexander Hunsberger case; yet Respondent, unlike Alexander Hunsberger, never asked for a trial. He, in fact, expressed the intent to avoid a trial and acquiesced to delay stemming in large part from delay in the capital proceedings for co-defendant Barnes.

The dissent notes in discrete detail the differences between the two cases, the most stark of which is that Respondent not only did not ask for a trial, he did not want one. (Petition Appendix, p. 7). The dissent critically considered the impact of those distinctions in fair application of Sixth Amendment jurisprudence:

> Unlike cases in which a defendant merely sleeps on his right to a speedy trial, [Respondent Julio Hunsberger's] failure to raise his right is made more significant because it was intentional. Here, the delay in resolution – apart from the State's given reasons of the

> Georgia prosecution and Steven Barnes capital murder case delay – was occasioned partly as a matter of trial strategy. In fact , counsel for [Respondent Julio Hunsberger] stated he was hoping that the prosecution of Steven Barnes would lead to the State choosing not to prosecute [Respondent] due to his life sentence in Georgia. At the hearing, Petitioner's counsel explained, "Sometimes that [asserting the right] can be a dangerous proposition. You may get just what you ask for." Thus, the record clearly evinces a desire on [Respondent's] part not to go to trial.

(Petition Appendix, p. 9).

The well-reasoned dissent continues to consider the facts in light of *Barker*, and found the acquiescence and strategy – as they were in *Barker* – facts that weigh against relief:

> Petitioner sought to delay trial to reap the potential benefits from the delay. Therefore, it is my opinion that this case certainly does not present the extraordinary circumstances envisioned by *Barker* in which a court could find Petitioner's right to a speedy trial was violated in the face of his stated intent to avoid trial pending the outcome of the Barnes murder trial.

(Petition Appendix, p. 10).

The dissent was directly on point with the guidance from *Barker*:

> We do not hold that there may never be a situation in which an indictment may be dismissed on speedy trial grounds where the defendant has failed to object to continuances. There may be a situation in which the defendant was represented by

> incompetent counsel, was severely prejudiced, or even cases in which the continuances were granted ex parte. But barring extraordinary circumstances, we would be reluctant indeed to rule that a defendant was denied this constitutional right on a record that strongly indicates, as does this one, that the defendant did not want a speedy trial.

Barker, 407 U.S. at 536.

Imaginations would strain to envision a more fundamental failure by a state supreme court in application of *Barker* than to fail to consider, weigh, and decide in individual consideration of the totality of the facts of the defendant's case, the impact of the critical fact of express acquiescence. In addition to this critical fact, Petitioner underscores the necessity of context that is part and parcel of a proper evaluation. Here, even though the parties agree on the basic length of delay, Respondent simply fails to place the delay in context.

For example, Respondent's assertion the prosecution "refused to call this case to trial for ten years following arrest and indictment," (Brief in

Opposition, p. 1; see also p. 17), is itself an assertion that misleads in its simplicity. No demand for trial was refused, and no opposition was lodged to the expressed, and outwardly reasonable, prosecution plan. Further, and of no little note, is that because the Barnes case was already noticed as a capital case, it could not be simply placed on the roster. The prosecution did not have that full authority.

In capital cases in South Carolina, one specific circuit court judge is assigned authority over the case and secures adherence to the additional requirements unique to capital litigation. See, for example, S.C. Code Ann. § 16-3-26. Thus, the prosecution does not have the control to simply call the case. That is a complication in holding the significant delay in the co-defendant's capital proceedings prior to the trial in this case against the prosecution – especially where there is no demand by Respondent for a trial on his charges.

Finally, the State of South Carolina contests the legal conclusions in the Alexander Hunsberger case, and has petitioned this Court to review the windfall relief. (See Docket No. 16-1142). It would be odd indeed to allow a second windfall by relying on a flawed grant of relief. Yet, that contest aside, because this Court requires individual determinations on the facts of each case to afford full effect and faithful application of this Court's precedent, the Supreme Court of South Carolina must be reversed with instructions to apply the *Barker* factors to the facts of this case.

CONCLUSION

For the reasons set forth in both the petition for writ of certiorari and this reply, Petitioner respectfully requests this Court grant certiorari, reverse the Supreme Court of South Carolina, and remand for proper analysis of the facts in this case.

Respectfully submitted,

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