

No. 18-_____

IN THE
Supreme Court of the United States

RAFAEL GOMEZ URANGA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

BRIAN MENDELSOHN
Counsel of Record
FEDERAL DEFENDER PROGRAM
101 Marietta Street, NW
Suite 1500
Atlanta, Georgia 30303
(404) 688-7530
Brian_Mendelsohn@FD.org

QUESTIONS PRESENTED

In *Barker v. Wingo*, 407 U.S. 514 (1972) this Court laid out a four factor test to analyze whether a constitutional speedy trial violation has occurred. If the factors weigh heavily against the Government, then prejudice from the delay is presumed and a defendant is not required to show actual prejudice. One of the factors is the reason for the delay. Intentional delay weighs heavily against the Government. Governmental negligence is on the wrong side of the line, but does not weigh heavily against the Government. *United States v. Doggett*, 505 U.S. 647, 657 (1992).

The question presented here is whether a speedy trial delay caused exclusively by the gross negligence of the Government weighs heavily against the Government.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Rafael Gomez Uranga respectfully petitions for a writ of certiorari to review the judgment of the Eleventh Circuit Court of Appeals.

INTRODUCTION

In *Barker v. Wingo*, 407 U.S. 514 (1972), this Court set out a four-factor test to determine whether a defendant's constitutional right to a speedy trial was violated. The four factors are: 1) the length of the delay, 2) the reason for the delay, 3) the defendant's assertion of the speedy trial right, and 4) the prejudice to the defendant. If the first three factors weigh heavily in favor of the defendant, then prejudice is presumed and the defendant is not required to demonstrate actual prejudice. *United States v. Ingram*, 446 F.3d 1332, 1336 (11th Cir. 2006).

This case focuses on the interplay between the second and third factors – the reason for the delay and the length of the delay. In *Barker* and *United States v. Doggett*, 505 U.S. 647 (1992), this Court explained that the more egregious the reason for the delay, the shorter the length of the delay has to be before a speedy trial violation occurs. Thus, an intentional delay caused by prosecutor to gain a trial advantage would weigh heavily against the Government and likely result in the finding of a speedy trial violation. Meanwhile, a similar delay would not result in a violation if the delay occurred despite diligent good-faith efforts to bring a case to trial. But what of the vast space between? “Between diligent prosecution and bad-

faith delay, official negligence in bringing an accused to trial occupies the middle ground.” *Doggett v. United States*, 505 U.S. 647, 656 (1992). Negligence falls somewhere in the middle, but is weighed against the Government. “And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness. . . .” *Id.* at 657.

The issue presented by this case revolves around what courts should do when the delay is caused by the Government’s gross negligence. Gross negligence occupies a space between bad faith and negligence. As such, following *Doggett*, one would expect that a speedy trial violation would occur sooner in a gross negligence situation than it would in a mere negligence one. The courts of appeals are split on this.

OPINION BELOW

The published opinion of the Eleventh Circuit Court of Appeals is reported at 909 F.3d 1292 (11th Cir. 2018). Neither the order of the United States District Court for the Northern District of Georgia nor the report and recommendation of the United States magistrate judge that the order adopts are reported. They are included in the appendix below.

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was entered on November 30, 2018. This Court has

jurisdiction under 28 U.S.C. § 1254(1), which permits review of criminal cases in the courts of appeals.

STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

This case began with a pair of commercial warehouse burglaries in late 2011. *United States v. Oliva*, 909 F.3d 1292, 1295 (11th Cir. 2018). At the second, unsuccessful burglary, local police officers arrested Mr. Uranga in a nearby automobile. *Id.* at 1296. Four other men fled. At the time of his arrest, on November 28, 2011, Mr. Uranga carried a driver's license in his wallet. (Doc. 76 at 21).¹ The license listed his correct address in Hialeah, Florida. (Doc. 76 at 21). Shortly after his arrest, Mr. Uranga was charged with burglary in the Superior Court of Gwinnett County (Ga.). The court records list this same address for Mr. Uranga. (Doc. 47, Attachment 3). Once the state court released Mr. Uranga on bond, he continued to live at the Florida address through his later federal prosecution.

A full two years after the crimes, on November 25, 2013, a federal grand jury in the Northern District of Georgia indicted Mr. Uranga and others on two counts: conspiracy to transport stolen goods in interstate commerce and transporting stolen goods in interstate commerce. (Doc. 1). Nearly two years later, on October 9, 2015, federal agents finally arrested Mr. Uranga. That delay is the subject of this petition.

The lead federal investigator on the case was FBI Task Force Officer Michael Donnelly. (Doc. 106 at 2). Donnelly was a Gwinnett County police officer assigned to the

¹ The citation Doc. ___ refers to the district court docket entry.

federal task force. (Doc. 95 at 3). By the date of the federal indictment, November 25, 2013, Donnelly had in his possession a federal indictment and arrest warrant for Mr. Uranga, plus a color photograph of the driver's license showing Mr. Uranga's current address in Florida. (Doc. 76 at 14, 21). Yet for nearly two years, neither Donnelly nor any other member of the FBI task force made any effort to arrest Mr. Uranga. All the while, during the four years between the state and federal arrests, Mr. Uranga lived openly at the address of record on the driver's license and the Gwinnett County court records.

So why, when the federal government held an indictment, an arrest warrant, and a current address in its collective hands, did two years pass before it arrested Mr. Uranga? The short answer: no government official lifted a finger to try to make the arrest. The long answer requires a few more details. When a federal law enforcement agency, such as the FBI, investigates a case that results in an indictment, that agency, and not the United States Marshal Service, is responsible for arresting the indicted person. (Doc. 76 at 33-34). Because the FBI task force investigated Mr. Uranga, those officers alone were responsible for arresting him on the federal indictment. (Doc. 95 at 7; Doc. 106 at 2). But Donnelly, the lead case agent here, did nothing—or nearly nothing—for a very long time.

For two years, Donnelly believed (wrongly) that another federal agency—the U.S. Marshal Service—was responsible for carrying out the arrest. (Doc. 76 at 18). Donnelly took only one, meager step to figure out which

agency was obligated to arrest Mr. Uranga. Shortly after the indictment, in late 2013, Donnelly asked a fellow task force agent, Joshua Thompson, to “look into it.” (Doc. 76 at 33). Thompson, who himself once worked with the U.S. Marshal Service, made a call to the Marshal Service and promptly learned that it was the FBI’s responsibility to make the arrest. (Doc. 76 at 33-34). Thompson then checked several databases for Mr. Uranga’s location and gave the paperwork with his results to Donnelly. (Doc. 76 at 34). Yet Thompson insists that he failed to tell Donnelly that he, not the Marshal Service, was required to arrest Mr. Uranga. (Doc. 76 at 40-41).

The United States Attorney’s Office was also to blame. The line prosecutor who indicted the case never spoke with Donnelly between the federal indictment in November 2013 and her departure from the United States Attorney’s Office in September 2014. (Doc. 76 at 26). After the AUSA left the United States Attorney’s Office, no prosecutor at all was assigned to Mr. Uranga’s case for more than a year, until October 2015. (Doc. 76 at 24). No one in the prosecutors’ office ever took responsibility to guide Donnelly in his duty to arrest the defendants.

Finally, in late September or early October 2015, Donnelly learned that he himself was responsible for making the arrest; his FBI supervisor told him so during a case review. (Doc. 76 at 28, 30). Within 24 hours Donnelly began to search for Mr. Uranga and the other defendants. *Oliva*, 909 F.3d at 1297. Federal agents promptly found and arrested Mr. Uranga at his home in Florida—the home listed on his driver’s license and state court documents—

and transported him to Atlanta to face the federal indictment.

Mr. Uranga soon filed a motion to dismiss the indictment based upon a speedy trial violation. After two evidentiary hearings, the magistrate judge recommended that the motion be denied. (Doc. 95). But she first made several factual findings that are important to highlight here. The magistrate judge declared that Donnelly's and Thompson's claim that they never discussed the FBI's responsibility for handling its own arrests was "inexplicabl[e]" and "defies logic." (Doc. 95 at 12). The magistrate court professed herself to be "very troubled" and found that the delay between indictment and arrest was caused by the federal government's "gross negligence." (Doc. 95 at 21). Yet in spite of these stark factual findings, the magistrate judge concluded that the reason for and length of delay did not weigh *heavily* against the Government; she recommended the motion to dismiss be denied. (Doc. 95 at 22, 25).

The district court adopted these factual findings, including the Government's "gross negligence" (which it found to be "extremely troubling"), but denied Mr. Uranga's motion. (Doc. 106 at 8, 30). It did so because while the reason for the delay ("gross negligence") and the length of delay weighed against the Government, those considerations did not weigh *heavily* against the Government. *Oliva*, 909 F. 3d at 1300. And because Mr. Uranga could not, as he conceded, show actual prejudice from the delay, the speedy trial claim failed. *Id.* Mr. Uranga entered a conditional guilty plea to the conspiracy

count. The plea agreement specifically allowed for him to appeal the denial of the speedy trial motion. (Doc. 117 at 13). The district court sentenced Mr. Uranga to 30 months of imprisonment. (Doc. 136). The district court granted Mr. Uranga’s request for an appeal bond—he is not yet in custody on this sentence. (Doc. 143).

On September 18, 2018, a panel of the Eleventh Circuit affirmed the district court’s denial of Mr. Uranga’s motion to dismiss. After Mr. Uranga filed a petition for panel and en banc rehearing, the Eleventh Circuit withdrew its initial opinion and substituted a new opinion on November 30, 2018. The only difference in the two opinions is the addition of a new footnote 15 discussing how many months should count toward the length of delay.

In its opinion, the Eleventh Circuit accepted the fact-finding by the district court and took at face value “the Government’s gross negligence—Donnelly’s near-complete inaction.” *Oliva*, 909 F.3d at 1300. The Eleventh Circuit highlighted the magistrate judge’s findings that Donnelly’s and Thompson’s claim that they never spoke about the FBI’s responsibility for handling its own arrest—“inexplicabl[e]” and “defying logic”—by noting that the officers’ behavior was “puzzling and not logical.” *Id.* at 1297 n.5. The Eleventh Circuit also accepted the magistrate judge’s (and district court’s) finding that “the Government was ‘grossly negligent’ in failing to procure the Appellants’ arrests.” *Id.* at 1299. Yet the Eleventh Circuit steered away from these undisputed facts and recast the facts this way: “There is no evidence of bad faith or anything other than

an honest mistake here.” *Id.* at 1297 & n. 5.² The Eleventh Circuit then passed these undisputed facts through the relevant Supreme Court filters: *Barker* and *Doggett*. With concessions by the parties on two of the *Barker* factors, the Eleventh Circuit oversaw this narrow battleground: whether or not the length of the delay and the reason for it must be weighed heavily against the Government.

The Eleventh Circuit then, as it set out the ground rules, abruptly downgraded the Government’s “gross negligence” to mere “negligence.” *Oliva*, 909 F.3d at 1302. It then dispatched the speedy trial claim finding that mere negligence does not weigh heavily against the Government with a 24 month delay.

REASONS FOR GRANTING THE PETITION

I. There is a circuit split over how to assess a speedy trial violation when the reason for the delay is caused by gross negligence by the Government.

While this Court has declared that “negligence” falls on the wrong side of the divide between excusable and inexcusable reasons for the delay, it has not written off “gross negligence.” *Doggett*, 505 U.S. at 657. Just how bad is it? In this case, the Eleventh Circuit simply dropped the word “gross” and analyzed the situation as if it involved mere negligence on the part of the Government. *Oliva*, 909 F.3d at 1302. In other words, a finding of gross negligence

² Mr. Uranga agreed with this characterization at oral argument.

does not add any additional weight on the scale to determine how long of a delay is prejudicial. On the other hand, both the Sixth and the Eighth Circuits weigh it more heavily against the Government than mere negligence and require less of a delay.

In *United States v. Ferreira*, 665 F.3d 701 (6th Cir. 2011), there was a three year delay caused by the Government's gross negligence. The Court made clear that not every three-year delay would be a speedy trial violation. However, because of the Government's gross negligence, the case crossed the line into one in which the delay was presumptively prejudicial.

Similarly, in *United States v. Erenas-Luna*, 560 F.3d 772, 777 (8th Cir. 2009), a 37-month delay between indictment and arraignment because the Government was "clearly seriously negligent" in failing to apprehend the defendant. The Eighth Circuit found that because of the higher level of negligence on the part of the Government, the three-year delay rose to the level where prejudice is presumed. The Eighth Circuit explained, "although the delay in this case is shorter than the delay at issue in *Doggett*, we believe *Doggett*'s instruction to vary the weight assigned to the presumption according to the Government's negligence and the length of delay sufficiently contemplates this difference." *Id.* at 780.

Not only does the decision in Petitioner's case conflict with the decisions of the Sixth and Eighth Circuits, it also creates a conflict within the Eleventh Circuit. In *United States v. Ingram*, 446 F.3d 1332 (11th Cir. 2006), a two-

year delay caused by mere negligence on the part of the Government allowed the court to presume prejudice and find a speedy trial violation. One would expect that if a two year delay caused by mere negligence would result in presumed prejudice and constitute a speedy trial violation, a two or three year delay (depending on how it is counted)³ in Petitioner's case that was caused by gross negligence would certainly result in a speedy trial violation.

II. This case is an ideal vehicle for answering the question presented and resolving the underlying circuit conflict.

This case presents the perfect opportunity to address the merits of the conflict. The speedy trial issue was litigated extensively in the district court and there is a clear evidentiary record. In addition, the district court made explicit findings that the cause of the delay was gross negligence by the Government. This finding was presumed correct by the Eleventh Circuit. In addition, the claims

³ The Eleventh Circuit indicated that post-indictment delay is counted from the time of the indictment through the time of a trial or guilty plea. In Petitioner's case, this would be 34 months. However, the Eleventh Circuit ruled that the delay in this case was only 23 months because Petitioner did not argue the longer period in his district court filings. *Oliva*, 909 F.3d at 1304, n. 15. However, the Eleventh Circuit found that even the 34 month delay was not long enough to create a speedy trial violation. *Id.* Using the 34 month delay, Petitioner's case is virtually identical to *Ferreire* and *Erenas-Luna*.

were properly preserved in the district court and adjudicated on the merits in the court of appeals.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

BRIAN MENDELSONH
Counsel of Record
FEDERAL DEFENDER PROGRAM
101 Marietta Street, NW
Suite 1500
Atlanta, Georgia 30303
(404) 688-7530
Brian_Mendelsohn@FD.org

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