

18-9292
No. _____

Supreme Court, U.S.
FILED

FEB 14 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Tim B. Fredrickson — PETITIONER
(Your Name)

vs.

U.S.A. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Seventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Timothy B.
Fredrickson

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ORIGINAL

United States Supreme Court

USA
V.
Fredrickson

District No. 17-cr-40032
App. No. 18-3555, 18-3566, 18-2469
Supreme Court No.

Cover Sheet

Questions Presented:

The speedy trial Act and pre-trial release

- What recourse is available to a defendant, when an appeal and mandamus enforcement of the ministerial and self-executing release on bail provision of 3164 are denied without reaching the merits, and said denial is in direct opposition to the Supreme Court's clearly established and express allowance of appealing adverse bail decisions categorically, and in direct opposition to the Supreme Court's express disallowance of distinguishing one request of bail from another.
- How does title 18 §3164 and its 90-day continuous detainee clock operate if §3164 is subject to the same exclusions as §3161(c)(1)'s 70 day trial clock?
- How can we give effect to §3164(c)'s "through no fault of the accused" language, if §3161(h)(6)'s tolling due to a codefendant expressly applies?, if §3161(h)(1)(H)'s tolling expressly applies, and all proceedings per se concern the defendant?, if §3161(h)(3)(A)'s tolling due to an unavailable witness is expressly incorporated?, if §3161(h)(7)'s tolling due to a judge or government continuance expressly applies?
- Under what circumstances may the court(s) ignore controlling (constitutional, statutory and case) law(s) in opposition to the original, prolonged (two years +), and indefinite continuing pre-trial detention of a defendant?
- Given the imperative public importance of bail, as well as its both civil and collateral nature; are appeals of bail subject to a limited appeal period?, if some courts continue to arbitrarily read 28§1291's limits into 18§3145, is the FRAP 4(a)(1)(B) civil period of 60-days most appropriate?, or should FRAP 4(b)'s strict 14-day limit continue to be enforced?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B,C,D,E,F,G the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 12/26/18 and 12/27/18

B and D

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1/18/19 and 2/7/19, and a copy of the order denying rehearing appears at Appendix C & E

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

And any other provision deemed just.

28	§1651(a)
28	§2241
18	§3145(c)
	Fed.Sup.Ct.R. 10
	Fed.Sup.Ct.R. 11

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

8th Amendment prohibition of excessive bail

5th Amendment Due Process clause (substantive and procedural)

* Prohibition of pretrial punishment

* Procedural right to the full protections of all statutory provisions

18§3142 - Governing bail and detention

18§3145 - (b) appeal to district Judge; (c) Appellate review

18§3162 - Governing excludable time under the speedy trial act

18§3164 - Pretrial release over 90-days

6th Amendment guarantee of effective counsel

5th Amendment right of access to the court, through counsel or otherwise

STATEMENT OF THE CASE

Bail. The petitioner's plight animates the very concerns raised by both the Majority and Dissent in Salerno whereby defendants are detained categorically in a scatter-shot attempt to indefinitely incapacitate a broad class of innocent persons with allegations legally presumed to be untrue, moreover upon the highly faulty satisfaction of a Judge that such persons will commit crimes both unrelated to the pending charge and outside of federal jurisdiction, all without the "full blown" (Salerno) hearing required by both procedural (18§3142) and substantive (Flores) due process. Furthermore, the rights to both de novo review by the district Judge (§3145(b)) and meaningful appeal (§3145(c)) have been obliterated. What the law freely grants with one hand is arbitrarily taken away with the other.

~~obj-style="cursor:auto" style="font-family: inherit; font-size: inherit; font-weight: inherit; text-decoration: none;">The Bail Reform Act of 1986 [§3142] was upheld 6 to 3; Amended in~~

2006, the new BRA does not pass constitutional muster. The petitioner brings all (and far more) of the issues left unaddressed in Salerno, urging the use of the full Mendoza-Martinez test.

~~obj-style="cursor:auto" style="font-family: inherit; font-size: inherit; font-weight: inherit; text-decoration: none;">This case concerns principles of federalism, 4 interrelated statutes,~~

Statutory interpretation, self-executing sub-sections, circuit splits, incorrect standards applied, unmet burdens, ignored statutory factors, decisions contrary to clearly established law, original and continued denial of bail (from defense, prosecution, and Judge alike) as coercive pressure to sign a plea bargain, punitive pretrial punishment as the petitioner enters year 3 of unbroken pretrial confinement, and the astoundingly often overlooked intersection of the speedy trial act and pretrial release. The Supreme Court has not addressed §3164, and there is a circuit split.

Reasons for Granting the Petition

- The 4th circuit (Howard) has entered a decision in conflict with decisions of the 9th (Tirasso) and 7th (Krohn) circuits regarding exclusions under §3164, affecting the instant case (Dkt#62).
- The 7th circuit, in the instant case, has entered a decision in direct conflict with both the 10th circuit (Robinson), and relevant decisions of this court (Behrens;Digital), by holding that denial of bail under §3164 is neither bail under §3145 nor appealable under §1291.
- The 7th circuit has decided an important federal question in a way that conflicts with relevant decisions of this court: Despite bail's civil nature (*Salerno*), bail is subject to the criminal appeal period of 14-days (Appendix F&G), Cf : Habeas Browder @269@563; Hilton @776@2119.
- Various district courts have decided an important question of federal law that has not been, but should be, settled by this court; namely whether §3145(b)'s district court review is limited to the same 14-day review/appeal limit typically reserved exclusively by the court of appeals, beyond which relief is forever unavailable.
- Deciding proper standards (28§2072) and procedures of bail for pretrial detainees across the country, present and future, is of such imperative public importance as to require immediate determination in this court; namely:
 - Whether bail may be delayed well beyond §3142's cap of 5-days
 - Whether bail must first be held before a magistrate, to preserve §3145(b) as a matter of statutory right and to maintain equal protection
 - Whether a pretrial detainee is entitled to one sua sponte detention hearing per year

Consequences of allowing judgment to stand

- 1) Courts may continue to treat 18§3164 as wholly surplusage, including self-executing provisions.
- 2) Denial of bail under 18§3164 is not appealable.
- 3) Defendants are precluded from utilizing the Bail Reform Act, ProSe.
- 4) District Judges may ignore mandatory statutory language and detain/hold an initial appearance bail hearing in abeyance indefinitely.
- 5) Appellate courts may nullify an appeal by construing an unhelpful and unintended argument in order to avoid reaching the merits.
- 6) District judges may ignore controlling precedent, depending on who brings it to the court's attention.
- 7) Long-term pretrial detainees are greatly prejudiced in prospective appeal of bail.
- 8) Despite bail's civil/regulatory nature (*Salerno*), the 14-day criminal appeal period applies, rather than the 60-day civil appeal period.
- 9) The prosecution may ignore and even act in opposition to it's ethical obligations to the defendant/Justice, and it's professional obligations to the court and community.
- 10)The prosecution is entitled to liberal construation where a pro se litigant is not.
- 11)Parties may opt-out of the speedy trial act (cf Zedner)
- 12)18§3145(b) is surplusage and the independent denovo review unavailable if a district Judge rules in the first instance.

Conclusion

Justice and public confidence in it are paramount; failure to grant the writ of certiorari would not only destroy public confidence at it's most basic level but condone continued deterioration at all levels and across the USA.

The courts below have departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of this court's supervisory powers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tim Fenn

Date: 5/6/19