No. 19-5697

IN THE SUPREME COURT OF THE UNITED STATES

FELIPE VINAGRE-HERNANDEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a motion for pretrial detention is a "pretrial motion" under the Speedy Trial Act of 1974, 18 U.S.C. 3161(h)(1)(D).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (W.D. Tex.):

United States v. Vinagre-Hernandez, No. 17-cr-168 (May 1, 2018)

United States Court of Appeals (5th Cir.):

United States v. Vinagre-Hernandez, No. 18-50402 (June 7, 2019)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-6) is reported at 925 F.3d 761.

JURISDICTION

The judgment of the court of appeals was entered on June 7, 2019. The petition for a writ of certiorari was filed on August 20, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Texas, petitioner was convicted of

possession with intent to distribute between 100 and 1000 kilograms of marijuana, in violation of 18 U.S.C. 2 and 21 U.S.C. 841. See Pet. App. 1-5. The district court sentenced petitioner to 60 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1-6.

1. On May 11, 2017, petitioner was part of a group of six people that crossed the Texas-Mexico border carrying large packs containing a total of 145 kilograms of marijuana. Pet. App. 3-4. When confronted by border patrol agents, petitioner and four others fled, leaving one man to be arrested with the packs. Id. at 3. Soon thereafter, petitioner was arrested about a mile away. Ibid.

The following day, the government filed a motion for pretrial detention. Pet. App. 5. The district court granted the motion a week later. Ibid. On June 13, 2017, a federal grand jury indicted petitioner for possession with intent to distribute between 100 and 1000 kilograms of marijuana. Ibid.

Months later, petitioner -- who was represented by counsel -- sent a pro se handwritten letter to the district court contending that his indictment was void, because it was obtained "2 days past the dead line." C.A. ROA 20. The court did not respond to petitioner's letter. Following a trial, petitioner was convicted of possession with intent to distribute between 100 and 1000 kilograms of marijuana. Pet. App. 4.

2. On appeal, Petitioner argued, as relevant here, that his indictment violated the Speedy Trial Act of 1974, 18 U.S.C. 3161 et seq. Pet. App. 5. According to petitioner, since he was arrested on May 11, 2017, the government had to indict him by June 12 to comply with the Speedy Trial Act's general 30-day time limit for an indictment. Ibid. The court of appeals rejected that argument, explaining that the government's motion for pretrial detention fell within the Act's exclusion for "delay resulting from any pretrial motion," 18 U.S.C. 3161(h)(1)(D), and therefore stopped the Act's 30-day clock until the court ruled on the motion. Pet. App. 5. The court thus determined that the June 13 indictment was timely. Ibid.

ARGUMENT

Petitioner contends (Pet. 5-10) that his indictment was untimely under the Speedy Trial Act because the government's motion for pretrial detention did not qualify as a "pretrial motion" that tolls the Speedy Trial Act's 30-day clock under 18 U.S.C. 3161(h)(1)(D). The court of appeals correctly rejected that contention. Every court of appeals that has addressed the issue, directly or indirectly, has agreed with the court below. In any event, this case would not be a suitable vehicle to address the question presented because petitioner failed to preserve his argument in the district court. Further review is not warranted.

1. The Speedy Trial Act generally requires the government to file an information or indictment against a defendant within 30

days of his arrest. 18 U.S.C. 3161(b). The Act, however, provides that certain "periods of delay," listed in 18 U.S.C. 3161(h), "shall be excluded from computing time within which an information or an indictment must be filed," or the computation of the separate time limit for commencing trial. See 18 U.S.C. 3161(h); see Bloate v. United States, 559 U.S. 196, 203 (2010) (applying Section 3161(h) to the Act's 70-day time limit between indictment and trial). The periods of delay excludable under Section 3161(h) include "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." 18 U.S.C. 3161(h)(1)(D).

The government's pretrial detention motion in this case qualifies as a "pretrial motion" under the plain language of 18 U.S.C. 3161(h)(1)(D). Section 3161(h) itself states that it applies when "computing the time within which an information or an indictment must be filed." 18 U.S.C. 3161(h). And the exception in 3161(h) for pretrial motions applies to "any pretrial motion." 18 U.S.C. 3161(h)(1)(D). "[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" Ali v. Federal Bureau of Prisons, 552 U.S. 214, 219 (2008) (quoting United States v. Gonzales, 520 U.S. 1, 5 (1997)). The government's pretrial detention motion was plainly a kind of motion that is filed before trial. The statute that authorizes the government to seek pretrial detention is entitled "Release or detention of a defendant pending trial." See 18 U.S.C. 3142. It instructs a

judicial officer to "issue an order that, pending trial," a defendant should be detained. 18 U.S.C. 3142(a)(3)-(4). And this Court has itself referred to the statute as authorizing "pretrial detention." United States v. Montalvo-Murillo, 495 U.S. 711, 717 (1990). A motion for pretrial detention under 18 U.S.C. 3142 is therefore a "pretrial motion."

Petitioner acknowledges (Pet. 8-9) that every court of appeals to have addressed the issue, directly or indirectly, has agreed with the court below that a motion for pretrial detention made before indictment qualifies as a "pretrial motion." See United States v. Stubblefield, 643 F.3d 291, 294-295 (D.C. Cir. 2011); United States v. Moses, 15 F.3d 774, 777 (8th Cir.), cert. denied, 512 U.S. 1212 (1994); United States v. Wright, 990 F.2d 147, 148-149 (4th Cir.), cert. denied, 510 U.S. 871 (1993); United States v. Bowers, 834 F.2d 607, 609 (6th Cir. 1987) (per curiam), abrogated on other grounds by United States v. White, 920 F.3d 1109, 1110-1111 (6th Cir. 2019), petition for cert. pending, No. 19-587 (filed Nov. 1, 2019). The government is aware of no court of appeals holding otherwise.

2. Petitioner does not dispute that if the pretrial detention in this case was a "pretrial motion," then his indictment was timely under the Speedy Trial Act. He nevertheless contends (Pet. 5-10) that only motions made after indictment can be "pretrial motions" under the Act. But as the court below recognized, "there is no precedent or reason to create this

distinction." Pet. App. 5. Nothing in the statute's text supports it, and the statute's structure refutes it. When Congress chose to distinguish between the time before and after indictment in the Act, it did so explicitly. For example, the clock runs for only 30 days between arrest and indictment, but runs for 70 days between indictment and trial. Compare 18 U.S.C. 3161(b), with 18 U.S.C. 3161(c). But Section 3161(h) itself states that its exclusions apply to calculating both the time for an information or indictment and the time for commencing trial. If Congress had wanted some provisions in Section 3161(h) to apply only after indictment, it would have stated that expressly.

Apart from the text, petitioner relies upon an analogy to the Court's decisions concerning the constitutional right to a speedy trial. Pet. 7-8 (citing Doggett v. United States, 505 U.S. 647 (1992) and Barker v. Wingo, 407 U.S. 514 (1972)). Those decisions do not interpret the term "pretrial motion" in the Speedy Trial Act. They also do not support petitioner's argument because those cases would draw the relevant line in this case at petitioner's arrest, not his indictment. The Sixth Amendment's guarantee of a speedy trial attaches when "a defendant is arrested or formally accused," whichever is earlier. See Betterman v. Montana, 136 S. Ct. 1609, 1613 (2016); see also United States v. Marion, 404 U.S. 307, 321 (1971) ("[W]e decline to extend the reach of the [Sixth] [A]mendment to the period prior to arrest."). The Due Process Clause governs claims of delay "before arrest or indictment." See

Betterman, 136 S. Ct. at 1613. Thus, if these cases draw any line that is relevant to interpreting the term "pretrial motion" in the Speedy Trial Act, they draw the line between the time before arrest and indictment (whichever is earlier) and the time after that event. Here, that distinction would be between the time before and after petitioner's arrest.

Finally, petitioner asserts (Pet. 8) that the Fifth Circuit's interpretation of "pretrial motion" to encompass a motion for pretrial detention risks rendering "all of the days of one's life" a "pretrial state." But if the government has neither filed a complaint nor made an arrest, no motions will be, or could be, filed.

3. In any event, even if the question presented warranted the Court's attention, this case would be a poor vehicle for addressing it, because petitioner did not preserve his claim in the district court. Under the Speedy Trial Act, failure to move for dismissal prior to trial "shall constitute a waiver of the right to dismissal under this section." 18 U.S.C. 3162(a)(2). This waiver provision applies to a challenge under the Act's 30-day time limit for indictments. See United States v. Hines, 694 F.3d 112, 118 (D.C. Cir. 2012); United States v. Spagnuolo, 469 F.3d 39, 44 (1st Cir. 2006); United States v. Gamboa, 439 F.3d 796, 803-804 (8th Cir.), cert. denied, 549 U.S. 1042 (2006); United States v. Lewis, 980 F.2d 555, 560 (9th Cir. 1992), abrogated on other grounds by Bloate, supra. Here, petitioner's counsel never

moved for dismissal under the Speedy Trial Act. He has therefore waived his Speedy Trial claim.

Petitioner suggests (Pet. 3) that his pro se letter to the district court preserved the issue for review. But the district court had no obligation to address the pro se letter, because petitioner was represented by counsel at the time. A district court need not consider a pro se motion when the defendant is already represented by counsel. See United States v. Smith, 815 F.3d 671, 678-679 (10th Cir. 2016); United States v. Sanders, 843 F.3d 1050, 1053-1054 (5th Cir. 2016); United States v. Pate, 754 F.3d 550, 553 (8th Cir.), cert. denied, 135 S. Ct. 386 (2014); United States v. Patterson, 576 F.3d 431, 436-437 (7th Cir. 2009), cert. denied, 559 U.S. 906 (2010); United States v. Tracy, 989 F.2d 1279, 1285 (1st Cir.), cert. denied, 508 U.S. 929 (1993); United States v. Halbert, 640 F.2d 1000, 1009-1010 (9th Cir. 1981) (per curiam). The court is not required "to permit 'hybrid' representation." McKaskle v. Wiggins, 465 U.S. 168, 183 (1984). Because petitioner failed to properly raise his Speedy Trial Act claim in the district court, he waived the claim that he now seeks to present to this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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