No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES ROBERT PETERSON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari *to the United States Court of Appeals for the Fourth Circuit*

(CA4 No. 18-4269)

Petition for *Writ of Certiorari*

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QUESTION PRESENTED

The Interstate Agreement on Detainers Act ("IADA"), P.L. 91-538 (Dec. 9, 1970), amended by Anti-Drug Abuse Act of 1988, P.L. 100-690, Title VII, § 7059, 102 Stat. 4403 (Nov. 18, 1988), *available at* 18 U.S.C. Appx. 2—a compact adopted by the federal government, 48 states, and the District of Columbia—imposes certain procedural responsibilities on jurisdictions that prosecute a prisoner of another signatory. Among other things:

> [T]rial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

IADA, 18 U.S.C. App. 2, § 2, art. IV(c). But that period is "tolled whenever and for as long as the prisoner is unable to stand trial…." IADA, § 2, art. VI(a).

The "courts of appeals are divided" over whether pretrial motions toll the IADA's time-to-trial clock. *United States v. Whitning*, 28 F.3d 1296 (1st Cir. 1994) (collecting cases). Some circuits say yes, to harmonize the IADA with the later-enacted Speedy Trial Act of 1974 ("STA"), 18 U.S.C. §§ 3161-74. Several state courts agree—even though the federal STA does not even apply to them. By contrast, two circuits, and several other state courts, hold the opposite.

To resolve that split, the question presented here is the following:

1. Does a pending motion automatically toll the IADA's time-to-trial clock, to the same extent as under the STA?

LIST OF PARTIES

All parties to this Petition appear on the cover.

LIST OF RELATED PROCEEDINGS

United States v. Bun, No. 18-4270, U.S. Court of Appeals for the Fourth Circuit. Judgment entered December 16, 2019. He has filed a *petition for certiorari* under No. 19-1037, which is still pending.

United States v. Peterson, No. 18-4269, U.S. Court of Appeals for the Fourth Circuit. Judgment entered December 16, 2019.

United States v. Bun, et al., No. 7:17-cr-94-TMC, U.S. District Court for the District of South Carolina. Judgment as to Sok Bun and James Robert Peterson entered April 27, 2018.

The other defendants in the district court proceeding did not file appeals. Those defendants were: Paul Ray Davis (judgment entered October 2, 2019), Jhon Marlon Acosta (judgment entered May 9, 2018), David Elijah Allen (judgment entered May 13, 2019), Samuel Travis Wiggins (judgment entered March 25, 2019), Robert Lee Moore (indictment dismissed August 22, 2017), and Marcus Antwan Pearson (judgment entered January 23, 2019).

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James Robert Peterson respectfully petitions for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The decision of the Fourth Circuit is reported at 945 F.3d 144 (4th Cir. 2019). The decision of the district court, however, is unreported. Both are included in the Appendix.

JURISDICTION

The district court had jurisdiction over the federal crimes charged. 18 U.S.C. § 3231.

This Court has jurisdiction to review the judgment of the Fourth Circuit. 28 U.S.C. § 1254(1). Judgment below was entered on December 16, 2019. No rehearing was requested or received.

STATUTORY PROVISIONS INVOLVED

Article IV(a) of Section 2 of the Interstate Agreement on Detainers Act ("IADA"), P.L. 91-538 (Dec. 9, 1970), amended by Anti-Drug Abuse Act of 1988, P.L. 100-690, Title, VII, § 7059, 102 Stat. 4403 (Nov. 18, 1988), *available at* 18 U.S.C. Appx. 2, provides:

> The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated….
>
> * * *
>
> IADA, § 2, art. IV(c) provides:
>
> In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.
>
> * * *

IADA, § 2, art. VI(a) provides:

> In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

STATEMENT OF THE CASE

I. Mr. Peterson Obtains a Dismissal Without Prejudice of an Indictment After Establishing an IADA Violation in the District of South Carolina, Which Had Not Complied with the IADA's Anti-Shuttling Prohibitions for Over Twenty Years.

In September 2016, a federal grand jury in the district of South Carolina returned an Indictment against fifteen defendants, including Messrs. Peterson and Sok Bun. The indictment alleged a conspiracy to possess with intent to distribute methamphetamine centered in the South Carolina Department of Corrections ("SCDC") and other substantive drug and related offenses.

At the time of the Indictment, Mr. Peterson and co-defendant Bun were serving state sentences in the SCDC. Mr. Peterson's sentence will end in 2040, while Mr. Bun is serving life without parole. Following a transport order, Messrs. Peterson and Bun were arraigned in federal court on November 3, 2016, and the U.S. Marshal's Service ("USMS") lodged detainers for them with SCDC. The USMS released Messrs. Peterson and Bun back to SCDC custody.

Specifically invoking the IADA's right for a prisoner to be continuously kept in custody in the prosecuting jurisdiction, Mr. Peterson requested and received an order from the magistrate judge for him to be kept in a local USMS contract facility. Nonetheless, after Mr. Peterson appeared in person for a pretrial conference on November 30, 2016, the USMS returned Mr. Peterson to SCDC.

On December 1, 2016, Mr. Peterson moved to dismiss the indictment for violation of the IADA. The evidence at the hearing showed that the USMS had

not looked at the magistrate court's order requiring Mr. Peterson to be kept in USMS custody. With respect to the IADA, a supervisory USMS deputy with 22-years of experience testified that he had never even heard of the law and obviously had not sought to comply with it previously.

Although the Government agreed that a dismissal was required, the Government argued that only a dismissal without prejudice should issue. The district court agreed.

Prior to the dismissal, Mr. Peterson made a demand for a speedy trial, on both constitutional and IADA grounds.

II. Mr. Peterson Is Indicted in a New Case on the Same Charges.

Mr. Peterson was re-indicted on the same charges and arraigned on the new indictment on February 24, 2017, and the case was placed on the trial roster for May 9, 2017.

On April 7, 2017, in response to a request from a co-defendant that he needed "three days, four days" to review some new discovery and in response to the Government's stated intention to file a belated motion to consolidate the case with the original case (from which Messrs. Peterson and Bun had been dismissed), the district court—over objection from Messrs. Peterson and Bun—continued the case until July 10, 2017. Mr. Peterson renewed his speedy trial demand on the docket.

On June 13, 2017—after Mr. Peterson had filed a motion to dismiss the indictment under the STA but before the motion was heard—the Government obtained a superseding indictment, albeit one that added two new co-defendants rather than altering the substantive charges pending against Mr. Peterson. The district court denied the motion to dismiss. [Appendix 24a]. The Government also moved for a continuance because it believed that the newly indicted defendants, who had recently been appointed counsel but were not present at the hearing, could not be prepared for trial in July and because two defendants in the original case had moved for mental evaluations. Mr. Peterson (and Mr. Bun) again objected to the delay. But the district court granted the continuance, setting the trial for the September term of court, which began on September 20, 2017.

Mr. Peterson and Mr. Bun were the only two individuals among all the defendants indicted in the two cases who went to trial. Both were convicted at trial. Mr. Peterson was sentenced to 330 months consecutive to his state sentence that ends in 2040. (Mr. Bun received 360 months consecutive to his existing life-without-parole sentence.)

III. The Fourth Circuit Affirms on the Theory that Time Excluded Under the STA, Including During the Pendency of Pretrial Motions, also Tolls the IADA Trial Clock.

Among other things, Mr. Peterson argued that he had not been brought to trial within the 120 days guaranteed under the IADA. The Government argued

that the combined effect of pretrial motions and the district court's continuances meant that Mr. Peterson started trial "with all 120 days remaining on [the] IADA clock"—even though that was 371 calendar days after Mr. Peterson first left SCDC on the original indictment and 208 days after the second case had been opened.

The Fourth Circuit agreed that the trial had been timely. It held that all time excludable under the STA, including during the pendency of pretrial motions, also tolls the IADA clock—less based on actual statutory text than on policy grounds:

> While the tolling provisions of the STA and IADA may have slightly different wordings, their time clocks have broadly harmonious aims, and courts have treated the two in *pari materia*. To that end, while the government and defendants disagree about some of the particulars of the district court's tolling analysis, what is clear is that if both continuances granted under the STA and time spent adjudicating a defendant's pretrial motions stop the IADA's 120-day clock, then Peterson and Bun's trial date complied with the statute. Because we hold that they do, we affirm the district court's judgment on this score.

Peterson, 945 F.3d at 155, [Appendix 15a].

REASONS FOR GRANTING THE PETITION

"Forty-eight States, the Federal Government, and the District of Columbia… have entered into the Interstate Agreement on Detainers ['IADA']…, an interstate compact. The Council of State Governments drafted the language of the [IADA] in 1956. The United States joined in 1970." *Alabama v. Bozeman*, 533 U.S. 146, 148-49 (2001).

The stated purpose of the IADA is to "encourage the expeditious and orderly disposition" of new charges by one signatory against a prisoner in the custody of a different signatory. IADA, § 2, Art. I. Because the IADA is an interstate compact, it is a "federal law subject to federal construction," *New York v. Hill*, 528 U.S. 110, 111 (2000) (citations omitted), regardless as to forum of the prosecution.

As explained below, in the more than 60 years since the IADA was first drafted, a deep split has emerged concerning the requirement that the "trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State" unless "for good cause shown in open court…, the court having jurisdiction of the matter… grant[s] any necessary or reasonable continuance." IADA, § 2, Art. IV(c).[1] Some courts hold that the mere filing of a motion does not automatically toll the time-to-trial clock during the pendency of the motion. Other courts hold the opposite. The Fourth Circuit below joined that latter camp—and was wrong to do have done so. Because this split arises over an important legal issue and because this case is a particularly good vehicle, this Court should grant this Petition.

[1] The IADA also allows prisoners who have not been transported from their home jurisdictions to demand that they be tried within 180 days. IADA, § 2, art. III(a). Both the 120-day and 180-day clocks "shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter." IADA, § 2, art. VI(a). Case law interpreting the tolling period applicable to the 180-day clock is, therefore, equally applicable to case law governing tolling of the 120-day clock.

I. The Courts Below Are Divided on the Effect of a Motion on the IADA's Time-to-Trial Clock.

The IADA provides that the time-to-trial deadlines "shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter." IADA, § 2, Art. VI(a). Some courts correctly find the filing of a motion does not implicate that tolling provision. Other courts conclude otherwise.

A. Some Courts Hold that Motions Do Not Toll the Trial Clock.

At least two federal courts of appeal reject the notion, embraced below, that a pretrial motion makes a defendant "unable to stand trial" and thus tolls the IADA's time-to-trial clock. The Fifth Circuit is one. In *Birdwell v. Skeen*, 983 F.2d 1332 (5th Cir. 1993), it explained that when Congress passed the IADA in 1970, the phrase "unable to stand trial" had been "consistently and only used by federal courts to refer to a party's physical or mental ability to stand trial…" *Id.* at 1340-41 (footnotes collecting federal cases omitted). The Fifth Circuit was unwilling "to expand that phrase to encompass legal inability due to the filing of motions or requests." *Id.* (footnote omitted). Similarly, the Sixth Circuit held that the filing of a habeas petition with respect to the prisoner's underlying conviction did not toll the deadlines for the prosecution in the second forum because it does not implicate the defendant being "physically or mentally disabled." *Stroble v. Anderson*, 587 F.2d 830, 838 (6th Cir. 1978).

Some state courts agree. The New Mexico Court of Appeals has held that the drafters of the IADA intentionally chose periods long enough to contemplate pretrial motions and that any extra time requires explicit resort to the continuance procedure in the IADA:

> It is unsettling to note that in the cases cited by the State and those we have independently perused wherein defendants were held to have caused a tolling of the limitation period because their motions 'delayed' trial, none indicated that the prosecution had availed itself of the simple statutory expedient of requesting continuance 'for good cause shown.' Thus[,] the prosecutors' lack of diligence and noncompliance were excused, and the defendants' resort to the entitlements allowed them were held to operate against their protections in a punitive manner. Those decisions do not appear to be in keeping with the 'solemn agreement' that the Agreement on Detainers 'shall be liberally construed so as to effectuate its purposes' of encouraging expeditious and orderly dispositions of untried charges.
>
> We prefer, therefore, to adopt the view that the time limitations of the Agreement were intended to permit sufficient time and opportunity for disposition of all pre-trial proceedings and commencement of trial before the time expired. The Agreement specifies that time is tolled only when the prisoner is 'unable to stand trial' as determined by the court; in all other circumstances, it provides the mechanism for reasonably or necessarily extending the time limits by a request for continuance 'for good cause shown.' When the trial court has not been asked to exercise the authority granted to it by the Agreement for extending the time to bring the matter to trial, we find nothing in the Agreement or in logic which would give us the authority to do so.

State v. Shaw, 651 P.2d 115, 120 (N.M. Ct. App. 1982) (citations omitted).

Likewise, authority from the Missouri Court of Appeals does not treat a defendant's motion as automatically tolling the IADA's trial clock. *See State ex*

rel. Hammett v. McKenzie, 596 S.W.2d 53, 58 (Mo. Ct. App. 1980) (holding that defendant's request for a public defender does not toll the IADA's time-to-trial clock).

For its part, Florida does not toll the IADA clock if the defendant's pretrial motions do not actually impact the trial date. *See Vining v. State*, 637 So. 2d 921, 925 (Fla. 1994) (per curium) ("The State contends that Vining's pretrial motions tolled the time limits under the IAD….[W]e do not agree with the State…. Even though Vining filed a number of motions, the original trial date was never changed. Thus, no delay can be attributed to Vining's motion practice.").

B. *Other Courts, Including the Fourth Circuit Below, Hold that Motions Do Toll the Trial Clock.*

As the Fourth Circuit below recognized, several federal courts of appeal hold that pretrial motions by a defendant toll the IADA's time-to-trial clock to the same extent as they do the STA time-to-trial clock:

> [T]he IADA's clock should toll when a district court is adjudicating pretrial motions raised by the defense. The STA's 70-day speedy trial clock tolls for the pendency of pretrial motions. 18 U.S.C. § 3161(h)(1)(D). Of a part, the IADA's 120-day clock tolls "whenever and for as long as the prisoner is unable to stand trial." 18 U.S.C. Art.VI(a). To bring this provision of the IADA into conformity with the STA, the clear majority of our sister circuits have read this tolling section "to include those periods of delays caused by the defendant's own actions." *United States v. Ellerbe*, 372 F.3d 462, 468 (D.C. Cir. 2004) (collecting cases from First, Second, Seventh, and Ninth Circuits). *But see Birdwell v. Skeen*, 983 F.2d 1332, 1340-41 (5th Cir. 1993). In particular, these courts have held that a defendant's own actions

> include "periods of delay occasioned by . . . motions filed on behalf of [a] defendant." *United States v. Nesbitt*, 852 F.2d 1502, 1516 (7th Cir. 1988). We agree with this interpretation of the IADA's "unable to stand trial" tolling provision. Not only does it harmonize the IADA with the STA, as our precedent in *Odom* requires, but it also avoids creating an incentive for defendants to saddle district courts with innumerable pretrial motions in hopes of manufacturing delays and waiting out the IADA's 120-day clock.

Peterson, 945 F.3d at 154-55, [Appendix 15a] (some citations omitted; original ellipses). The Fourth Circuit did not explain why time adjudicating a motion from a co-defendant and/or the Government should also count against the defendant under the IADA, as it does under the STA. *See* 18 U.S.C. § 3161(h)(1)(D) (excluding time for STA purposes "from any pretrial motion from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion").

In any event, several state courts also agree that a defendant's pretrial motion automatically tolls the IADA time-to-trial clock. *See, e.g.*, *Cobb v. State*, 260 S.E.2d 60, 64 (Ga. 1979) ("The court was authorized to find that the 120-day time limit… was tolled by the delay occasioned by the appellant's numerous pretrial motions…."); *State v. Batungbacal*, 913 P.2d 49, 56 (Haw. 1996) (explaining that "such an interpretation of the IAD allocates responsibility for delay where it belongs—on the party filing the motion."); *Diaz v. State*, 50 P.3d 166, 167 (Nev. 2002) (4-1 decision noting that "[t]he United States circuit courts of appeals are divided as to whether the IAD period is tolled during the time required to resolve matters raised by the defendant" but joining those that

so hold (footnote omitted)); *State v. Bernson*, 807 P.2d 309, 310-11 (Or. Ct. App. 1991) ("We hold that time expended in defense pretrial motions, including time necessary to resolve them on appeal, is time that the prisoner is 'unable to stand trial' and tolls the 120-day period."); *Commonwealth v. Montione*, 720 A.2d 738, 741 (Penn. 1998) (noting the "conflicting" authorities and joining the authorities holding that pretrial motions by the defendant toll the time-to-trial clock); [2] *Jones v. State*, 813 P.2d 629, 648 (Wyo. 1991) (4-1 decision adopting rule that motions toll the IADA's time-to-trial clock).

II. The Fourth Circuit Below Was Incorrect.

While the Fourth Circuit below sought to look to the later-passed STA to inform the meaning of the earlier-enacted IADA, it was wrong to have done so.

First, that the two statutes use different statutory language is strong evidence that Congress intended the statutes to have different meanings. *See, e.g.*, *Sosa v. Alvarez-Machain*, 542 U.S. 692, 713 n.9 (2004) ("[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended. (quotation omitted)). Indeed, the judgment below does not even acknowledge that this Court

[2] At one time, the lower courts in Pennsylvania had selected the opposite view. *See, e.g.*, *Commonwealth v. Kripplebauer*, 469 A.2d 639, 641 (Pa. Super. Ct. 1983) ("[W]e find that appellee's exercising his right to file pre-trial motions does not amount to a request for a continuance and does not affect his ability to stand trial.")

has already recognized that the IADA and the STA may impose different limitations. *United States v. Mauro*, 436 U.S. 340, 356 n.24 (1975) (explaining that where the IADA and STA have different trial deadlines, the "more stringent limitation" applies). Nor does it recognize that this Court has previously called comparisons between the IAD and the STA "inapt." *Hill*, 528 U.S. at 117 (n.2). *See also, e.g.*, *State v. Rieger,* 708 N.W.2d 630, 639 (Neb. 2006) (holding that "the Court of Appeals erred in applying Nebraska's… speedy trial rule…to determine whether Rieger was timely brought to trial [under the IADA]" and finding it unnecessary to decide the effect of a pending motion on the IADA trial clock). *But contra Vining*, 637 So. 2d at 925 ("[W]e will not grant greater dignity to the IAD's speedy trial time limit than to Florida's speedy trial rule….").

Second, to the extent that the decision rests upon a belief that a defendant is automatically responsible for any delay from filing a pretrial motion, that belief is incorrect. After all, "[i]t is the obligation of the prosecutor and the court to bring the matter to trial or to a hearing to resolve pretrial matters. Even though a defendant may file a motion that requires a hearing, there is no way for him to force the matter to be heard timely." *Bernson*, 807 P.2d at 310 (Richardson, J., dissenting). It is the Government, not the defendant, that controls

the number of judges, number of law clerks, and the complexity of the cases filed.[3]

Third, the decision below overlooks that when time is actually needed to adjudicate pretrial motions, the IADA drafters already included a provision to authorize continuances—albeit one that will protect defendants from excessive trial court delay rather than granting automatic tolling. *See Birdwell*, 983 F.2d at 1341 n.23 ("[W]hen a State or trial court legitimately needs time to respond to or rule upon a defense motion, the trial court should grant a reasonable or necessary continuance, consistent with the Article III(a) requirements."). The judicial rewriting of the IADA necessary to automatically toll motion periods as periods for which the defendant is "unable to stand trial" is thus a cure in search of a problem.

III. Resolving the Conflict Is Important.

As the Hawaii Supreme Court has noted, it is "[p]roblematic[]" that the drafters of the IADA did not explicitly define the phrase "unable to stand trial." *Batungbacal*, 913 P.2d at 55. Despite the long-standing nature of the uncertainty of the effect of pretrial motions on the time-to-trial clock, no legislative

[3] The Government, at least in federal court, often choses to join multiple defendants in the same proceeding via conspiracy counts. This case, for example, originally involved 15 defendants. Undersigned counsel was previously appointed to a case in federal court involving 83 co-defendants. *See United States v. Addison,* 3:17-cr—00134-FWD-DSC (W.D.N.C.)

solution has emerged. By accepting this case, this Court can give a binding IADA interpretation that will bring certainty to the lower courts.

Understanding the IADA's procedural requirements is imperative to the proper administration of justice. Defendants in those jurisdictions that subscribe to the majority rule, where motions automatically toll the clock, are at risk for abuse because "[p]rosecutors might be tempted to delay preparing a response for invalid reasons, knowing that that delay, though unreasonable and unnecessary, will not count in the IADA speedy trial computation. Such a rule might also encourage trial courts to delay ruling upon motions because of heavy dockets." *Birdwell*, 983 F.2d at 1341 n.23. Indeed, at least one court has noted that the majority rule actually discourages the filing of defense motions at all. *State v. Bernson*, 807 P.2d 309, 310 (Or. Ct. App. 1991) ("If the time limitation is not tolled while defense pretrial motions are pending, defendants may be encouraged to file motions."). *See also Diaz*, 50 P.3d at 169 (Rose, J., dissenting) ("I would certainly not want a defendant to feel restricted in litigating his case simply because he is fearful that it will effectuate a tolling of his demand to be brought to trial [under the IADA].")

IV. This Case Is a Particularly Good Vehicle to Resolve the Split.

This case, as opposed to others that will find its way to the Court in the future, is a particularly good vehicle to finally resolve the deep split presented here, for at least two important reasons.

First, the question was not only squarely raised and ruled on below, but the court below also agreed that the question presented below was integral to its judgement. *See Peterson*, 945 F.3d at 155, [Appendix 15a] ("[W]hat is clear is that if both continuances granted under the STA and time spent adjudicating a defendant's pretrial motions stop the IAD's 120-day clock, then Peterson and Bun's trial date complied with the statute. Because we hold that they do, we affirm the district court's judgment on this score.").

Second, a favorable ruling for Mr. Peterson will not result in a "get out of jail free" card. Unlike a state court, Congress has decided that district courts can choose whether to dismiss an indictment with or without prejudice. *See* IADA § 9 ("[I]n a case in which the United States is a receiving state….any order of a court dismissing any indictment…may be with or without prejudice."). Further, even if he received a dismissal with prejudice, Mr. Peterson's underlying state sentence of imprisonment extends until 2040. By contrast, delaying the issue for consideration in another case could involve a defendant serving a short underlying sentence obtaining a dismissal with prejudice of a serious charge. *See, e.g.*, *Vining*, 637 So. 2d 921 (involving defendant sentenced to death who raised an IADA-speedy-trial claim).

CONCLUSION

For the forgoing reasons, this Court should grant the petition, reverse the judgment below, and remand with instructions to dismiss the indictment, with

the district court to decide in the first instance whether the dismissal should be with or without prejudice.

Dated: March 11, 2020

Respectfully submitted,

JAMES ROBERT PETERSON

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APPENDIX

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4269

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

JAMES ROBERT PETERSON,

Defendant – Appellant.

No: 18-4270

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

SOK BUN, a/k/a Friday,

Defendant - Appellant.

Appeals from the United States District Court for the District of South Carolina, at Spartanburg. Timothy M. Cain, District Judge. (7:17-cr-00094-TMC-4)

Argued: October 30, 2019 Decided: December 16, 2019

Before WILKINSON, MOTZ, and FLOYD Circuit Judges.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge Motz and Judge Floyd joined.

ARGUED: Howard W. Anderson III, LAW OFFICE OF HOWARD W. ANDERSON III, LLC, Pendleton, South Carolina, for Appellants. Kathleen Michelle Stoughton, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee. **ON BRIEF:** C. Carlyle Steele, LAW OFFICE OF C. CARLYLE STEELE, Greenville, South Carolina, for Appellant Sok Bun. Sherri A. Lydon, United States Attorney, Brook Bowers Andrews, Assistant United States Attorney, Robert Frank Daley, Jr., Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

WILKINSON, Circuit Judge:

This case arises from the prosecution of two state inmates who were federally indicted for coordinating a methamphetamine distribution ring from prison. The overarching prosecution spanned three separate indictments; ensnared 15 other co-conspirators; and spawned some 50,000 pages of discovery. At the end of it, James Peterson and Sok Bun were tried together and found guilty. On appeal, they raise numerous claims, some jointly and others individually. One claim rises above the rest: They argue that the district court should have dismissed their initial indictment with prejudice because they were improperly transferred from federal to state custody in violation of the Interstate Agreement on Detainers Act (IADA). We disagree. The district court did not abuse its discretion in dismissing the indictment without prejudice, having carefully weighed the relevant set of non-exclusive factors set out in the IADA. Finding defendants' remaining five claims without merit, we affirm the district court's judgment.

I.

On September 14, 2016, Peterson and Bun, already inmates in the South Carolina Department of Corrections (SCDC), were indicted on a series of federal offenses for participating in a methamphetamine trafficking conspiracy while they were in prison. On September 25-29, 2017, the two were tried in connection with their involvement in this scheme. In those intervening twelve months, a litany of motions and procedural wrinkles bogged down the prosecution's pace, the details of which the parties continue to debate. For purposes of this appeal, there are three key points to follow.

First, the parties disagreed extensively over where Peterson and Bun should have

been held, consistent with federal law, in the leadup to their federal trial. Recall that defendants were indicted when they were already serving sentences in South Carolina state prison. This is important because the Interstate Agreement on Detainers Act generally requires an indicting jurisdiction (here, the federal government) to retain custody, once a detainer is filed, of a prisoner until disposing of his charges. 18 U.S.C. app. 2, § 2, art. IV(e). This dictate is often referred to as the IADA's "anti-shuttling" provision. And here, on two occasions in November 2016, at least one defendant was transferred from federal custody to state detention facilities. *See* J.A. 274, 338. In particular, on November 30, 2016, Peterson was transferred from federal to state custody under circumstances that, as all parties now agree, were in violation of the IADA's anti-shuttling provision. *See* J.A. 331.

In December 2016, defendants tried to have the charges against them dismissed with prejudice on the ground that the government violated the IADA by improperly transferring them from federal to state custody. They argued that the federal government had regularly violated the IADA in the District of South Carolina and that its conduct here was particularly egregious because it purportedly contravened a magistrate judge's order directing Peterson to be held in federal custody until the end of proceedings. The United States moved to dismiss the indictment against both Peterson and Bun without prejudice. For reasons explained below, the district court decided that the IADA was violated only with respect to one defendant (Peterson), but dismissed without prejudice as to both. J.A. 338.

Second, there were a series of disputes over whether defendants were indicted properly and in a timely fashion. As noted, defendants were initially indicted in September

2016. Two other indictments followed. After the district court dismissed the charges against Peterson and Bun without prejudice under the IADA in January 2017, the government re-indicted defendants on the same charges on February 15, 2017. They were formally arrested on February 24, 2017. Then, on June 13, 2017, a grand jury returned a superseding indictment that added two new co-defendants but alleged the same substantive charges.

Defendants attempted to dismiss each of these indictments. They argued that the reindictment should be dismissed because the federal government violated the IADA's requirement that defendants be brought to trial within 120 days of being transferred to federal custody once a detainer is filed. In addition, they claimed that the superseding indictment should be dismissed because it was filed too late under the Speedy Trial Act (STA). For reasons discussed below, the district court rejected both these claims in June and July 2017. Before trial, the court also granted three continuances, two of them over the objection of defendants.

Third, there were a few issues relating to the trial itself. As noted, defendants were eventually tried starting on September 25, 2017. After a four-day jury trial, Peterson and Bun were found guilty of all offenses. The district court sentenced Peterson to 330 months imprisonment and 5 years of supervised release, consecutive to the thirty-five year state sentence he was serving. Bun was sentenced to 360 months imprisonment and 5 years of supervised release, also consecutive to his state sentence of life in prison. Peterson alone challenges several evidentiary rulings made by the trial court.

We address the joint claims first—that is, the claims involving the IADA's anti-

shuttling provision, the Speedy Trial Act, and the IADA's speedy trial rights—and then turn to the individual claims—that is, Peterson's various evidentiary arguments.

II.

Peterson and Bun's primary challenge is to the district court's decision to dismiss the initial indictment without prejudice under Section 9(1) of the Interstate Agreement on Detainers Act. 18 U.S.C. app. 2, § 9(1). None of the parties contest that the government violated the IADA on November 30, 2016 when it transferred Peterson from federal custody to state prison after a pretrial hearing in federal court. *See* J.A. 331. The issue here is whether the district court abused its discretion in choosing, as provided for under the statute, to dismiss the indictment without rather than with prejudice. We conclude that it did not.

A.

The federal government and most states—South Carolina included—are signatories to the IADA, which sets out procedures by which one jurisdiction can resolve its charges against a prisoner in another jurisdiction's custody. *New York v. Hill*, 528 U.S. 110, 111 (2000). In broad strokes, this compact aims to remove uncertainties surrounding out-of-jurisdiction charges against a prisoner, and to prevent interruptions to programs of treatment and rehabilitation. 18 U.S.C. app. 2, § 2, art. I.

Two main provisions of the IADA work in tandem to accomplish these goals. Article III provides prisoners with certain speedy trial rights. Packaged with these guarantees are the protections of Article IV, which include the anti-shuttling provision. Under that section, as noted, the indicting jurisdiction must retain custody of a prisoner and

dispose of his charges before transferring him back to the sending jurisdiction. 18 U.S.C. app. 2, § 2, art. IV(e). Articles III and IV are both set in motion when the indicting jurisdiction files a detainer and the prisoner is sent to that jurisdiction. *United States v. Mauro*, 436 U.S. 340, 343-44 (1978).

Ordinarily, a violation of the anti-shuttling provision visits strict consequences—a dismissal of the indictment *with* prejudice. 18 U.S.C. app. 2, § 2, art. IV(e). But Congress carved out an exception to this general rule for when the United States is the jurisdiction receiving a prisoner. 18 U.S.C. app. 2, § 9(1). In this circumstance, the statute empowers the district court to decide whether dismissal with or without prejudice is appropriate, after considering a non-exclusive list of statutory factors. These are (1) "the seriousness of the offense"; (2) "the facts and circumstances of the case which led to the dismissal"; and (3) "the impact of a reprosecution on the administration of the agreement on detainers and on the administration of justice." *Id.*

This court has not yet adopted a standard of review for Section 9 dismissals. But the right choice naturally flows from the principle that "whenever possible, the interpretation of the [IADA and the STA] should not be discordant." *United States v. Odom*, 674 F.2d 228, 281-32 (4th Cir. 1982). Because the IADA has a dismissal clause nearly identical to that of the STA, 18 U.S.C. § 3162(a), and because we review a district court's decision to dismiss an indictment under the STA for abuse of discretion, *United States v. Jones*, 887 F.2d 492, 494 (4th Cir. 1989), we now hold the same standard applies in the IADA context. The decisions of our sister circuits are in accord. *See United States v. Kelley*, 402 F.3d 39, 41 (1st Cir. 2005); *United States v. McKinney*, 395 F.3d 837, 840 (8th Cir. 2005); *United*

States v. Kurt, 945 F.2d 248, 252 (9th Cir. 1991).

B.

We ask first whether the district court abused its discretion in electing to dismiss Peterson and Bun's initial indictment without prejudice. We hold it did not. To be clear, the federal government only violated the IADA with respect to Peterson. The district court ultimately dismissed Bun's indictment as a matter of grace, not of right, "to resolve any uncertainty regarding the application of the IADA and the defendants' status." J.A. 338. Because we uphold the district court's decision as to Peterson, the same holds for Bun.[1]

In a nutshell, Peterson argues the district court applied the IADA's statutory factors incorrectly. The district court held that all three cut against him. Peterson argues that two do not—the "facts and circumstances of the case which led to the dismissal" and the impact of re-prosecution on the administration of the IADA and the administration of justice. 18 U.S.C. app. 2, § 9(1). As to the first, according to Peterson, the surrounding facts supported a dismissal *with* prejudice because Peterson requested to stay in federal custody; his transfer to state custody violated a magistrate judge's order; and the District of South Carolina has systematically violated the IADA for twenty-plus years. As to the second, Peterson insists that federal prosecution on these charges would not further the administration of justice because he will still be in jail until 2040 for his state convictions

[1] Unlike Peterson, Bun was transferred only once from federal to state custody in November 2016 following defendants' initial arraignment. The district court held that this transfer did not violate the IADA because Peterson and Bun's detainers were not lodged until after the transfer. J.A. 338. Accordingly, the IADA violation underyling this first claim stems only from Peterson's second transfer.

and South Carolina can still bring state drug charges. Crediting these factors in his favor, Peterson contends, reveals that the district court abused its discretion when it dismissed the indictment without prejudice.

That is a tall order because the decision to dismiss with or without prejudice is committed to the trial court's discretion twice over. First, the IADA leaves it up to the district court to decide where each factor falls, and also what additional factors are appropriate to consider beyond the statute's non-exhaustive list. 18 U.S.C. app. 2, § 9(1). Second, the weighing of these factors collectively is also committed to the district court's discretion. *See United States v. Taylor*, 487 U.S. 326, 337 (1988) ("[W]hen the statutory factors are properly considered, and supporting factual findings are not clearly in error, the district court's judgment of how opposing considerations balance should not lightly be disturbed."). In short, the district court exercises discretion atop discretion in deciding whether to dismiss a case with prejudice. And we find no fault with the exercise of that discretion here.

To start, all parties do not dispute that at least one factor—the seriousness of the offense—cuts against a dismissal with prejudice. Courts have taken a "broad view" of this factor, examining the nature of the charged conduct and the potential sentence, which would necessarily include a defendant's prior criminal history. *United States v. Kurt*, 945 F.2d 248, 252-53 (9th Cir. 1991); *see also United States v. Ward*, Nos. 13-CR-40066-01-DDC, 14-CR-40139-01-DDC, 2015 WL 1959631, at *3-4 (D. Kan. Apr. 29, 2015) (collecting cases). Applied here, these considerations plainly show the seriousness of Peterson's offense. J.A. 333-34; *see Munez v. United States*, No. 09-3860, 2011 WL

221655, at *4-6 (D.N.J. Jan. 20, 2011) (holding that dismissal without prejudice is proper where prisoner participated in a crack cocaine distribution conspiracy and was likely to recidivate). Not only does Peterson face a decades-long sentence for his participation in the nationwide drug trafficking conspiracy at issue here, but he also is already serving a thirty-five year sentence for a state murder conviction (along with assault and battery with intent to kill). In short, as the district court noted, the first factor supports dismissal without prejudice because Peterson remains "a potential threat to public safety." J.A. 334.

The second factor—the surrounding facts and circumstances—also weighs in favor of dismissal without prejudice. As the district court recognized, federal marshals have systematically violated the IADA in the District of South Carolina. J.A. 335, 337.[2] In this instance, however, the fact remains that Peterson was shuttled to accommodate his own preferences. As the trial court explained, "Peterson's subsequent transfer to [Perry Correctional Institution (a state prison)] was the result of the efforts by the magistrate judge and [the United States Marshals Service (USMS)] to accommodate his counsel's request that he be housed locally to facilitate attorney-client communications and counsel's desire not to travel to [Lee Correctional Institution (another state prison)]." J.A. 334. The record

[2] Peterson urges that in response to this pattern this court should send a "big message" by dismissing his indictment with prejudice. J.A. 335. For the reasons stated, we do not think this case presents an appropriate vehicle to overrule the district court's considered exercise of discretion on this point. To the extent however that the USMS was failing to observe the terms of the IADA, we should underscore that disregard of a federal statute is not its prerogative. At oral argument, counsel assured the court that corrective measures have been and are being taken. We trust that courts will have the occasion in the future to take notice of their implementation.

is emphatic on this point. *E.g.*, J.A. 260, 300, 657-58. Indeed, at several junctures Peterson's counsel indicated that placing Peterson in a state facility satisfied his client's needs. For example, in an email to court personnel, Peterson's counsel stated that USMS's proposal to transfer Peterson to a closer state facility "obviate[d] the distance concern that [he] had," and accordingly, Peterson "would not need to spend a night in a local jail" under contract with the federal government. J.A. 300.

Moreover, even though a magistrate judge ordered the government in November 2016 to hold Peterson in a local jail under contract with the federal government, the government's conduct complied with the purpose of that order. The order's goal was to house Peterson closer to counsel, which is exactly what happened when Peterson was transferred to a nearby state facility in November 2016. J.A. 331. In fact, the magistrate judge took Peterson's transfer to that facility to render his former order unnecessary. J.A. 663. Furthermore, another relevant "fact and circumstance" is that there is no indication that the government acted in "bad faith." *United States v. Brewington*, 512 F.3d 995, 998 (7th Cir. 2008) (collecting cases). Specifically, as the district court recognized, there is no evidence that USMS, the federal agency responsible for Peterson's custody, colluded with the prosecution "to gain prosecutorial advantage in the case." J.A. 335; *see also id.* (noting the absence of "intentional misconduct or deliberate indifference in regard to the IADA violations"). Together, these circumstances reasonably tilt against dismissal with prejudice.

Finally, we turn to the "administration of justice" factor. Here again Peterson comes up short. The district court properly concluded that neither of the IADA's aims would be frustrated by a without-prejudice dismissal. Peterson's transfer did not interrupt his receipt

of any rehabilitation services, nor was the district court's order likely to cost Peterson a fair and speedy trial. J.A. 336-37. Peterson does not contend otherwise. He instead assures us that his lengthy state sentence for prior crimes obviates the need for a federal prosecution for his more recent participation in a nationwide drug conspiracy. We are not persuaded. The district court observed, and we agree, that the federal government has a weighty interest in resolving on their merits crimes as serious as those before us; the "corrosive and devastating effects" of methamphetamine on society compel as much. J.A. 337. Plainly, this interest in merits resolutions bears upon the "administration of justice." *See, e.g.*, *United States v. Martinez*, 376 F. Supp. 2d 1168, 1176 (D.N.M. 2004).

In sum, we hold that the district court did not abuse its discretion in dismissing defendants' initial indictment without prejudice. By affording district courts substantial discretion over this determination, Congress sought to ensure that violations of the IADA's anti-shuttling provision would not needlessly encumber federal prosecutions. The district court's order preserved that aim in full.

III.

Defendants also claim that their speedy trial rights under the IADA were violated. As relevant here, the IADA provides that a prisoner must be tried within 120 days of the date he arrives in the indicting jurisdiction after the filing of a detainer. 18 U.S.C. app. 2, § 2, art. IV(c). The IADA, though, "contains tolling provisions for certain events." *United States v. Winters*, 600 F.3d 963, 970 (8th Cir. 2010) (quotation omitted). Courts can grant "reasonable continuance[s]" upon a showing of "good cause." 18 U.S.C. app. 2, § 2, art. IV(c). The IADA clock also stops "whenever and for as long as the prisoner is unable to

stand trial, as determined by the court having jurisdiction on the matter." *Id.* at art. VI(a).

The trial for Peterson and Bun started on September 25, 2017. While the parties disagree about when the IADA clock exactly started for defendants, everyone agrees that their trial commenced more than 120 calendar days after their detainers were filed and they arrived in federal custody. The district court held that their September 2017 trial date nonetheless complied with the IADA because the Act's clock had sufficiently tolled in the interim. Between November 2016 and September 2017, the district court granted three continuances, two of which defendants challenged, and also adjudicated a stream of motions raised by both the government and defendants. The district court held that these actions adequately tolled the IADA on the grounds that the Act's 120-day clock stopped for (1) continuances granted under the Speedy Trial Act (STA), and (2) time spent adjudicating motions filed by defendants. J.A. 117-119.

Peterson and Bun contend that both these premises constituted legal error. We review this question of law de novo. *United States v. Han*, 74 F.3d 537, 540 (4th Cir. 1996). Specifically, defendants argue that continuances granted under the STA do not automatically toll the clock for the IADA because a finding that "the ends of justice [would be] served" (as required for continuances under the STA) does not necessarily constitute "good cause" (as required for continuances under the IADA). Further, they maintain that the IADA's clock does not stop for time spent adjudicating pretrial motions. As they see it, the IADA's 120-day clock tolls under only two specific circumstances: "good cause" continuances and when a defendant is "unable" to stand trial. Holding otherwise, they caution, would undermine the purposes of the IADA's speedy trial guarantees.

We disagree. Defendants' position would contravene our decision in *United States v. Odom*, 674 F.2d 228 (4th Cir. 1982). While Peterson and Bun's interpretation requires that we treat the IADA as materially distinct from the STA, we explained in *Odom* that "[w]henever possible, the interpretation of the Acts should not be discordant." 674 F.3d at 231. This because "related statutes having the same purpose should be construed together." *Id.* We thus held that periods excludable under the STA should also toll the clock under the IADA where possible. *See id.*; *United States v. Hines*, 717 F.2d 1481, 1486 (4th Cir. 1983).

Accordingly, it makes perfect sense to toll the IADA's clock for continuances granted under the STA. The STA has its own 70-day speedy trial provision, which tolls during, among other periods, continuances granted as "the ends of justice" require. 18 U.S.C. § 3161(h)(7)(A). Because the IADA's "good cause" standard is not materially different from the STA's "ends of justice" standard, it follows from *Odom* that what counts for the STA should satisfy the IADA. Indeed, on this logic, every circuit court to reach the issue has agreed that periods excludable under the STA for "ends of justice" continuances should also toll the 120-day clock under the IADA's substantially similar "good cause" continuance provision. *See, e.g.*, *United States v. McKay*, 431 F.3d 1085, 1091-92 (8th Cir. 2005); *United States v. Collins*, 90 F.3d 1420, 1428 (9th Cir. 1996); United *States v. Cephas*, 937 F.2d 816, 818-19 (2d Cir. 1991).

Likewise, it follows that the IADA's clock should toll when a district court is adjudicating pretrial motions raised by the defense. *See Hines*, 717 F.2d at 1486-87. The STA's 70-day speedy trial clock tolls for the pendency of pretrial motions. 18 U.S.C.

§ 3161(h)(1)(D). Of a part, the IADA's 120-day clock tolls "whenever and for as long as the prisoner is unable to stand trial." 18 U.S.C. Art.VI(a). To bring this provision of the IADA into conformity with the STA, the clear majority of our sister circuits have read this tolling section "to include those periods of delays caused by the defendant's own actions." *United States v. Ellerbe*, 372 F.3d 462, 468 (D.C. Cir. 2004) (collecting cases from First, Second, Seventh, and Ninth Circuits). *But see Birdwell v. Skeen*, 983 F.2d 1332, 1340-41 (5th Cir. 1993). In particular, these courts have held that a defendant's own actions include "periods of delay occasioned by . . . motions filed on behalf of [a] defendant." *United States v. Nesbitt*, 852 F.2d 1502, 1516 (7th Cir. 1988). We agree with this interpretation of the IADA's "unable to stand trial" tolling provision. Not only does it harmonize the IADA with the STA, as our precedent in *Odom* requires, but it also avoids creating an incentive for defendants to saddle district courts with innumerable pretrial motions in hopes of manufacturing delays and waiting out the IADA's 120-day clock.

While the tolling provisions of the STA and IADA may have slightly different wordings, their time clocks have broadly harmonious aims, and courts have treated the two *in pari materia*. To that end, while the government and defendants disagree about some of the particulars of the district court's tolling analysis, what is clear is that if both continuances granted under the STA and time spent adjudicating a defendant's pretrial motions stop the IADA's 120-day clock, then Peterson and Bun's trial date complied with the statute. Because we hold that they do, we affirm the district court's judgment on this score.

IV.

Next, we turn to defendants' argument that the superseding indictment should have been dismissed because it was filed too late to comply with the Speedy Trial Act.

The STA requires that "any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges." 18 U.S.C. § 3161(b). As earlier noted, the defendants' initial indictment was dismissed without prejudice. Defendants were re-indicted on February 15, 2017 and arrested on February 24, 2017. J.A. 13, 39-47. But the grand jury delivered a superseding indictment on June 13, 2017, which added additional defendants. J.A. 91-99. And while the superseding indictment involved the same charges as the reindictment, it obviously came more than thirty days after the February arrest.

The issue here is thus relatively straightforward: Does the STA require all indictments to be filed within thirty days following an arrest or summons or, as the district court held, is Section 3161(b) satisfied so long as the original indictment is submitted within that time frame? Because the district court's interpretation of the STA is a question of law, we review it de novo. *United States v. Cherry*, 720 F.3d 161, 165 (4th Cir. 2013).

According to Peterson and Bun, the plain text of the STA compels an all-indictments-in-thirty-days reading. On their telling, "any indictment" means "any indictment," and the government is accordingly barred from filing any new or superseding indictments after the thirty-day window has passed. By contrast, the government contends that this reading is overly literalistic, and that the structure and substance of the STA show

that the thirty-day window is concerned only with the original indictment to which superseding indictments are no more than a sequel or modification. Put otherwise, the point of the STA is to force the government to charge someone within thirty days of an arrest or summons, not to set those charges in stone.

To start, every federal court to have addressed the question has concluded that a "superseding indictment filed more than thirty days after arrest . . . does not violate section 3161(b) so long as the original indictment was filed within the required thirty day time frame." *United States v. Walker*, 545 F.3d 1081, 1086 (D.C. Cir. 2008). By our count, eight circuits have considered this issue and eight circuits have agreed on the result.[3] Peterson and Bun nonetheless insist that those courts have simply failed to give the word "any" its natural meaning.

The structure of the STA militates against defendants' interpretation. In statutory interpretation, context matters. *Graham County Soil and Water Conservation Dist. v. United States*, 559 U.S. 280, 290 (2010). And here, the core remedial provision of the STA indicates that the phrase "any indictment" is best read as concerning only the original indictment. Section 3162(a)(1) reads:

> If, in the case of any individual against whom a complaint is filed charging such individual with an offense, *no indictment or information* is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter,

[3] *Accord Walker*, 545 F.3d at 1086; *United States v. Hemmings*, 258 F.3d 587, 591-92 (7th Cir. 2001); *United States v. Berry*, 90 F.3d 148, 151 (6th Cir. 1996); *United States v. Mosquera*, 95 F.3d 1012, 1013 (11th Cir. 1996); *United States v. Orbino*, 981 F.2d 1035, 1037 (9th Cir. 1992); *United States v. Castellano*, 848 F.2d 63, 65 (5th Cir. 1988); *United States v. Mitchell*, 723 F.2d 1040, 1044-45 (1st Cir. 1983); *United States v. Rabb*, 680 F.2d 294, 297 (3d Cir. 1982).

> such charge against that individual contained in such complaint shall be dismissed or otherwise dropped.

18 U.S.C. § 3162(a)(1) (emphasis added). Under this section, the dismissal remedy requested by Peterson and Bun is invoked when "*no* indictment" is "filed within the time limit required by section 3161(b)." *Id.* (emphasis added); *see also Hemmings*, 258 F.3d at 592. If we take Section 3161(b) as referring only to the original indictment, then these provisions work cleanly in conjunction. But if we adopted defendants' interpretation, there would be a problem. That is, in order to dismiss a superseding indictment as untimely, we would have to hold that there was "no indictment" within the thirty-day window—put otherwise, we would have to maintain that the original indictment never happened. We see no reason to embrace this illogical reading when a coherent interpretation is readily available.

On a related front, defendants' reading of Section 3161(b) is also in tension with the substance of the STA. At bottom, their view requires the STA to "guarantee that an arrested individual indicted within thirty days of his arrest must, in that thirty-day period, be indicted for every crime known to the government." *Hemmings*, 258 F.3d at 592 (quoting *Mosquera*, 95 F.3d at 1013). This interpretation would force prosecutors to take a kitchen sink approach to indictments, lest they lose the ability to bring otherwise viable charges against a defendant in the future. We decline to adopt a reading that would spur over-charging defendants at the outset in order to preserve the government's options down the road.

In short, we join every federal court to address the question and hold that a

superseding indictment filed more than thirty days after an arrest does not violate Section 3161(b) so long as the original indictment was filed within the STA's thirty-day window.

V.

Having found each of defendants' joint claims unpersuasive, we turn our attention to the individual issues raised by Peterson. Speaking for himself, Peterson faults the district court for erring on a number of evidentiary issues at trial, which we review under an abuse-of-discretion standard. *United States v. Cole*, 631 F.3d 146, 153 (4th Cir. 2011).

Peterson claims initially that the district court abused its discretion when it forbade counsel from demonstrating to the jury that text message screenshots can readily be fabricated. At trial, the prosecution introduced a number of screenshots that documented text messages between undercover government agents and a phone number identified as belonging to Peterson. These exchanges culminated in an undercover buy of methamphetamine. At the time, Peterson did not object to the messages' authenticity, nor did he question their accuracy during cross-examination of the two government agents who testified as to the screenshots. Instead, two days after these witnesses testified, Peterson's counsel requested permission to demonstrate for the jury with his own iPhone how to falsify text message exchanges by either changing the contact information that comes up for a specific phone number, or using a publicly available website for creating fake text message screenshots. The district court denied the request.

The district court clearly did not abuse its discretion in doing so. *See* F.R.E. 403 (A "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of," among other things, "unfair prejudice."). The attempted demonstration had

virtually no probative value. Peterson offered no evidence to suggest that the screenshots submitted at trial were fabricated. Indeed, as the district court recognized, he did not even show that his lawyer's iPhone was the same make or model as any of the relevant phones used by the witnesses in this case. J.A. 1707; *see also United States v. Williams*, 461 F.3d 441, 446 (4th Cir. 2006) ("A courtroom demonstration that purports to recreate events at issue is relevant if performed under conditions that are substantially similar to the actual events.") (internal quotation omitted). Taken for what it is, Peterson's proposed demonstration was an attempt to prejudice the jury—an attempt to confuse it by throwing the veracity of text message screenshots *writ large* into doubt, without any effort to identify a connection to Peterson's case.

The same holds with respect to Peterson's next contention. Peterson argues that the district court abused its discretion when it prohibited him from telling the jury about his lengthy state sentence. In essence, Peterson wanted to make the case that he had no financial motive to deal methamphetamine because he was going to be in jail for the next thirty-plus years anyway. According to the district court, though, the earlier state sentence had little probative value to the charged federal crimes. The court also found that this collateral information would be highly prejudicial, both because it could confuse the jury and also encourage it to acquit Peterson on the ground that he was already serving a lengthy jail sentence for state offenses. J.A. 157; *see also United States v. Muse*, 83 F.3d 672, 677 (4th Cir. 1996). The district court's decision to exclude the evidence fully reflected the sentence's low probative value and its self-evident invitation to jury nullification.

Finally we address Peterson's argument that the district court abused its discretion

in excluding certain evidence that he wanted to use to impeach his co-conspirator. At trial, the jury heard testimony from a cooperating co-conspirator who recalled statements made by Bun that implicated Peterson in the drug trafficking ring. J.A. 1618-19. To discredit Bun, Peterson wanted to tell the jury about Bun's felony convictions and his ongoing life sentence. The district court decided to forbid testimony about both Bun's conviction and his sentence. It reached this conclusion after referencing Rule 403 and balancing the impeachment value to Peterson against the danger of unfair prejudice to Bun who was also standing trial. J.A. 1862-64. The court also noted that the "interest of . . . the Government" in avoiding jury nullification supported keeping the evidence out. *See id.* at 1863.

Peterson urges us to reverse this decision because the district court applied the wrong test. Namely, the district court used Rule 403's balancing test rather than the relevant test in Rule 609. The latter rule governs the use of criminal convictions for purposes of impeachment and sets out two different standards depending on the identity of the witness to be impeached. The trial judge must allow non-party witnesses to be impeached with their prior felony convictions, subject to the ordinary Rule 403 backstop. F.R.E. 609(a)(1)(A). Where a criminal defendant is the witness to be impeached, the trial judge must admit his prior felony conviction "if the probative value of the evidence outweighs its prejudicial effect *to that defendant*." F.R.E. 609(a)(1)(B) (emphasis added). Because the district court mistakenly believed the Rule 403-type analysis to govern, Peterson argues, it erroneously gave weight to an irrelevant factor—the government's interest—and therefore abused its discretion.

Even if true, this mistake does not negate what was a reasoned decision by the

district court to exclude the evidence. Looking to the substance of the matter, it is plain that the district court reached a result consistent with Rule 609(a)(1)(B). *See*, *e.g.*, J.A. 1862-64 ("I have to balance the interest of Mr. Peterson in having that information provided to the jury against the interest of Mr. Bun and avoiding prejudice to him."). The court reasoned that the probative value of Bun's felony conviction as impeachment evidence was slight, while its potential prejudice to Bun was substantial. As to the former, Bun's incarcerated status was already on full display before the jury because he chose to wear his jumpsuit to trial. As to the latter, the prejudicial impact to Bun of his prior conviction was apparent; in fact, Bun objected no less than five times to having this information before the jury. Relatedly, because the court properly excluded Bun's conviction, it follows that it was also well within its discretion to exclude his corresponding sentence.

One final point bears mention. The assignments of error all relate to evidentiary rulings in the course of conducting a trial, and the district judge was well within its discretion to rule as it quite reasonably did. *Even if* the district court erred on any or all of these matters, the result here would be the same because the aggregate effect of the errors would be harmless. *See United States v. Burfoot*, 899 F.3d 326, 340-41 (4th Cir. 2018). The jury had overwhelming evidence of Peterson's guilt. It heard, among other things, from a confidential informant, a cooperating co-conspirator, and several government agents linking Peterson to the criminal scheme. The jury also saw phone records between Peterson and the informant that led to an undercover buy of methamphetamine, as well as a series of text message screenshots pertaining to the same buy. Against this weight of evidence, we cannot say that any of these alleged evidentiary errors, taken alone or together, could

have "substantially swayed" the jury's decision to convict. *Id.* at 340 (quotation omitted).

The judgment of the district court is accordingly

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States, v. Sok Bun, Paul Ray Davis, Jhon Marlon Acosta, James Robert Peterson, David Elijah Allen, Samuel Travis Wiggins, Robert Lee Moore, Defendants.	)	C/A No. 7:17-cr-94-TMC **ORDER**

Before the court are Defendants James Robert Peterson, Paul Ray Davis, and Sok Bun's (collectively "Defendants") Motion to Dismiss and Supplemental Motion to Dismiss. (ECF Nos. 79, 105).[1] On June 18, 2017, the court held a hearing on these motions and numerous other motions. The court ruled on the majority of the motions at the hearing, but took these particular motions under advisement. For the reasons discussed below, the court denies the motions to dismiss.

I. Background/Procedural History

On September 14, 2016, a federal grand jury returned an indictment charging Defendants and eleven others with conspiring to possess with intent to distribute significant amounts of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 843(b) and 846; and other offenses. *United States v. Nancy Phon, et.al.,* C/A No. 7:16-00776-TMC. Defendants are currently incarcerated with the South Carolina Department of Corrections. An arrest warrant was issued for Defendants and on November 3, 2016, Defendants were transported from state custody to federal court in Greenville, South Carolina, pursuant to a writ ad prosequendum for their initial

[1]Defendants Bun and Davis filed motions (ECF Nos. 85 and 90) to join Defendant Peterson's motion, which the court granted. Bun also filed a memorandum in support of the motion to dismiss. (ECF No. 102).

appearance and arraignment. After the hearing, Defendants were returned to state custody and detainers were filed by the United States Marshals Service ("USMS").

On November 4, 2016, Defendant Peterson filed a motion for a hearing concerning his place of pre-trial confinement, specifically invoking his rights under the IADA. Peterson requested a hearing "so the court [could] decide the appropriate housing of [Peterson] pending trial in this action." Peterson later withdrew this motion on November 14, 2016.

On November 14, 2016, the Government filed a motion to continue the case beyond the November 2016 term of court. A pre-trial conference was held before the district court on November 30, 2016, at which time Defendants joined in the Government's pending motion to continue the case beyond the November 2016 term, and the court granted the Government's motion to continue the case.

Following the pre-trial conference, Peterson was returned to state custody, and on the following day, December 1, 2016, Peterson filed a motion to dismiss the indictment based on alleged IADA violations. On January 23, 2017, after a hearing, the court orally dismissed the indictment and took under advisement whether the dismissal would be with or without prejudice. On January 30, 2017, the court issued a written order dismissing the indictments without prejudice.[2]

On February 15, 2017, a grand jury returned an indictment in the instant action charging Defendants with conspiracy to possess with intent to distribute methamphetamine and related offenses, in violation of 21 U.S.C. §§ 841(a)(1), 843(b) and 846; and conspiracy to launder money, in violation of 18 U.S.C. § 1956(h). On February 24, 2017, pursuant to a writ ad

[2]The court found that the IADA had not been violated as to Defendants Bun, Acosta, and Davis, as detainers were not lodged until after the November 3rd hearing and these Defendants did not appear before the court again until January 23, 2017, for the hearing on the motion to dismiss based on alleged IADA violations.

prosequendum, Defendants were transported to federal court for arraignment. On February 24, 2017, after their arraignment, USMS lodged detainers against the defendants with the SCDC.

II. Discussion

Defendants contend that their speedy trial rights have been violated under the Speedy Trial Act, the IADA, and the Sixth Amendment. (ECF Nos. 79 and 105)

A. Speedy Trial Act

In their Motion to Dismiss, Defendants allege violations of their speedy trial rights under the Speedy Trial Act. (ECF No. 79). Defendants argue the triggering event was the arraignment on February 24, 2016, and the 70 days allowed for trial under the Speedy Trial Act ran on May 5, 2017. (ECF No. 79 at 3). Defendants also argue that the continuance granted on April 11th does not mitigate the Government's failure to try him by May 5th. (ECf No. 79 at 3 n.2). The Government contends the clock started on February 25, 2017, the day after the new indictment, and that, after allowing for excludable time periods, there has been no violation of the Speedy Trial Act.

Under the Speedy Trial Act, a defendant facing felony charges must be brought to trial within seventy days of the later of his indictment or his initial appearance before a judicial officer. *See* 18 U.S.C. § 3161(c)(1). The seventy-day time period in the Speedy Trial Act does not run continuously. The Act provides that certain "periods of delay shall be excluded . . . in computing the time within which the trial . . . must commence." 18 U.S.C. § 3161(h). The excludable time includes delays attributable to continuances granted "at the request of the defendant or his counsel or at the request of the attorney for the Government," if the court finds that "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Delays attributable to pretrial motions are also excluded from computation, from the time of filing to disposition. 18 U.S.C. §

3161(h)(1)(D). Additionally, "when a prosecution involves multiple defendants, the 'time excludable for one defendant is excludable for all defendants.'" *United States v. Kellam*, 568 F.3d 125, 137 (4th Cir. 2009) (*quoting United States v. Jarrell*, 147 F.3d 315, 316 (4th Cir. 1998)); 18 U.S.C. § 3161(h)(6) (excluding a "reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted"). If there is a violation of the Speedy Trial Act, upon counsel's motion, the indictment must be dismissed, although the trial court has the discretion to determine whether the dismissal is with or without prejudice. 18 U.S.C. § 3162(a)(2). Neither type of dismissal is "the presumptive remedy for a Speedy Trial Act violation." *United States v. Taylor*, 487 U.S. 326, 334 (1988).

The Government first assumes Defendants have made out a prima facie case and acknowledges that it has the burden to show there has not been any violations of the Speedy Trial Act. Then, the Government cites to the automatic statutory exclusions found in 18 U.S.C. §3161(h), and sets forth the periods it thinks are excludable under both the Speedy Trial Act and the IADA.

As an initial matter, the court must determine when the clock started to run. Pursuant to the Speedy Trial Act, when an indictment is dismissed on a defendant's motion, the clock resets, but when it is dismissed on the government's motion, it merely pauses until a new indictment is filed. *See* 18 U.S.C. 3161 (d)(1). *See also United States v. Rojas–Contreras*, 474 U.S. 231, 239 (1985) (Blackmun, J., concurring in the judgment). The Government states that the clock started anew on February 25, 2017, because the prior dismissal was at the defendants' request. Although in their motion, Defendants state that the date should be February 25, 2017, for the application of the Speedy Trial Act (ECF No. 79 at 3), there was some discussion at the hearing as to whether the previous dismissal without prejudice was a granting of Defendants' or the Government's

motion, and whether the second indictment re-started the clock.[3]

Assuming without deciding that the second indictment did not re-start the clock, there has been no violation of the Speedy Trial Act. The clock would have begun to run the day after Defendants were arraigned, November 4, 2016.[4] Ten days later on November 14, 2016, the Government filed a motion for a continuance, which the court granted on November 30, 2016, after the appropriate ends of justice analysis and finding and without opposition.[5] This stopped the clock for the Speedy Trial Act purposes until the next term of court in January. *See* 18 U.S.C.

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[3]In regard to the prior dismissal, the court notes that this case presents an unusual procedural history. Defendants were the first to file for a dismissal of the prior indictment for alleged IADA violations. Defendants sought a dismissal with prejudice. In response, the Government filed a motion to dismiss without prejudice based on the allegations of an IADA violation. The Government was not seeking a dismissal for another reason, and Defendants acknowledge this as they state that the Government moved for a dismissal "because Mr. Peterson complained that the Government had not complied with the anti-shuffling provisions of the IADA]." (ECF No. 79 at 1). After hearing the parties arguments during the hearing, the court stated it was going to dismiss the indictment, and the only question was whether it should be with or without prejudice. The court took the matter under advisement. Subsequently, in a written order, the court determined the dismissal should be without prejudice. Thus, while the court stated it was denying Defendants' motion and granting the Government's motion, it could have just as accurately stated it was granting the Defendants' motion in part and denying it in part. *See United States v. Irizarry-Colon*, 848 F.3d 61 (1st Cir. 2017) (subsequent reindictment of defendant began 70-day speedy trial clock anew because defendant filed motion to dismiss pending indictment with prejudice based on Speedy Trial Act grounds, and government merely filed a response to that motion, in which it conceded that dismissal was warranted but disputed whether it should be with prejudice); *United States v. Blackeagle*, 279 Fed.Appx. 588 (9th Cir. 2008). However, the court will assume without deciding for the purposes of these motions that the clock did not restart with the second indictment and arraignment.

[4]After acknowledging that the Fourth Circuit Court of Appeals held otherwise in *United States v. Stoudenmire*, 74 F.3d 60 (4th Cit. 1996), Defendants contend that the day of the arraignment is not excluded in calculations under the Speedy Trial Act. (ECF No. 133 at 2). The Fourth Circuit has held that Rule 45(a) applies in Speedy Trial Claims. *United States v. Wright,* 990 F.2d 147 (4th Cir. 1993). Moreover, "[t]he Committee Guidelines adopt Rule 45's time computations as the appropriate measures for computing time under the Speedy Trial Act." *United States v. Montoya*, 827 F.2d 143, 147 n.4 (7th Cir. 1987) (citing *Administration of the Criminal Law of the Judicial Conference of the United States, Guidelines to the Administration of the Speedy Trial Act of 1974, as Amended* at 24-25 (1984)).

[5]Arguably, Defendant Peterson's motion filed on November 4, 2016, specifically invoking his rights under the IADA also stopped the clock. Peterson withdrew this motion on November 14, 2016.

§ 3161(h)(1)(D); *United States v. Dorlouis*, 107 F3d. 248 (4th Cir. 1997) (holding § 3161 provides for excluding delay after the filing of a pretrial motion and the court's prompt disposition of such motion.).

On December 1, 2016, Defendants then filed their first motion to dismiss based on IADA violations which also stopped the clock until a hearing was held and the motion was ruled upon. After a hearing on the motion, on January 30, 2017, the court dismissed the indictment without prejudice. Therefore, the clock stopped beginning on November 13, 2016, until the January term of court because of the continuance and was also stopped from December 1, 2016, until January 30, 2017, because of the then pending IADA motion. The clock remained stopped until Defendants were arraigned on the second indictment on February 24, 2017. *See* 18 U.S.C. § 3161 (h)(5). The clock restarted on February 25, 2017. The clock was again stopped forty-two days later on April 8th when the motions to continue were filed by co-defendant Samuel Wiggins and the Government, which the court granted on April 11, 2017, after an ends of justice analysis and finding.[6] Moreover, the seventy-day period remains tolled because on June 19, 2017, after an ends of justice analysis and finding, the court granted another motion to continue the case until

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[6]The court's order granting the continuance on April 11th explained why the continuance met this standard:

> [T]he court finds this case is unusual and complex and that counsel cannot adequately prepare for trial or further pretrial proceedings within the time limits established by 18 U.S.C. 3161. Further, failure to grant a continuance could result in prejudice and a miscarriage of justice to Wiggins, while no showing has been made that granting a continuance will prejudice the remaining defendants. Finally, there is no evidence that the Government has engaged in an intentional delay in seeking the indictment of the defendants subsequent to their dismissal from the related case.

(ECF No. 69 at 2-3). While Defendants objected to this continuance, the Speedy Trial Act states that "a reasonable period of delay" shall be excluded from the speedy trial calculation "when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion of severance has been granted." 18 U.S.C. § 3161(h)(6).

the September term of court. (ECF No. 179).[7] With at most 52 days having run, there has been no violation of the Speedy Trial Act.

B. IADA

There are two main provisions of the IADA regarding the time within a prisoner must be tried. When a prisoner is indicted in another jurisdiction, the IADA requires that he be brought to trial within 180 days after the prisoner has notified his warden, the indicting prosecutor and the court in which the indictment is pending, of his request for disposition of the indictment. 18 U.S.C. App. 2, § 2, Art. III(a); *Fex v. Michigan*, 507 U.S. 43, 53 (1993). Once the prisoner is transferred to the indicting jurisdiction, he must be brought to trial within 120 days. IADA § 2, Art. V(c). A circumstance that would toll the 70-day Speedy Trial Act period also tolls the 180- and 120-day IADA periods. *See* IADA § 2, Arts. III(a), IV(c); 18 U.S.C. § 3161(h); *United States v. Hines,* 717 F.2d 1481, 1486 (4th Cir.1983) (citing *United States v. Odom*, 674 F.2d 228 (4th Cir. 1982) (holding that the Speedy Trial Act excludes delay resulting from a continuance based on a judge's findings "that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial" and this standard is similar to the provision in the IADA which allows a continuance only "for good cause.")).

In applying the IADA, Defendants contend that the clock started to run on November 30, 2016 - the date the court previously held Peterson had his first appearance in federal court after a detainer had been filed. Defendants then simply add 120 days and state that the trial should have been held by March 30, 2017.

Defendants were arraigned on the first indictment on November 3, 2016, and after the

[7]Defendants also argue that the continuance granted on April 11th does not mitigate the Government's failure to try him by May 5th. The court finds this argument non-sensical. A continuance was granted before May 5th extending the trial to the July term of court, and stopping the clock in April. Therefore, there can be no violation for a trial not taking place earlier in May.

hearing they were returned to state custody. Later that day a detainer was filed. Defendant Peterson was again placed in federal custody for a status conference which was held on November 30, 2016, and this started the clock for the IADA's 120-days limit. As noted above, after ten days, the Government filed a motion for a continuance on November 13, 2016, and the court granted it on November 30, 2016, after the ends of justice analysis and finding, which also stopped the clock until the next term of court in January. On December 1, 2016, Defendants then filed their first motion to dismiss based on IADA violations which also stopped the clock until a hearing was held and the motion was ruled upon. After a hearing on the motion, on January 30, 2017, the court dismissed the indictment without prejudice. Therefore, the clock stopped from December 1, 2016, until January 30, 2017, and remained stopped until Defendants were arraigned on the second indictment on February 24, 2017. The clock restarted on February 25, 2017. The clock was again stopped forty-two days later on April 8th when the motions to continue were filed by co-defendant Samuel Wiggins and the Government, which the court granted on April 11, 2017, after an ends of justice analysis and finding. Moreover, the 120-day period currently remains tolled because on June 19, 2017, after an ends of justice analysis and finding, the court granted another motion to continue the case until the September term of court. (ECF No. 179).

Again, the fact that Defendants did not consent to the continuances granted by the court does not change the analysis.[8] Furthermore, time excludable time under §3161(h) of the Speedy Trial Act the equivalent of "good cause" under the IADA, and therefore toll the IADA's speedy trial time limits as well. *Odom* 674 F.2d at 229-30; *Hines*, 717 F.2d at 1486 (noting the decision in *Odom* "held that the periods excluded under the Speedy Trial Act . . . likewise should be

[8]As noted above, the Speedy Trial Act excludes from the 70-day calculation certain periods of delay, including the "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).

excluded under the IAD."). The court considered the factors under § 3161(h)(7)(B) of the Speedy Trial Act in each instance, and found that the interests of justice were best served by granting a continuance. Based on the foregoing, the court finds no IADA violation.

B. Sixth Amendment

In their Supplemental Motion to Dismiss (ECF No. 105), Defendants also assert a violation of their speedy trial rights under the Sixth Amendment. Defendants rely on the initial indictment date of September 14, 2016, as the date the clock begins to run for a Sixth Amendment speedy trial rights claim. The Government contends that the initiation of federal charges was when Defendants were arraigned on February 24, 2017.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . . " U.S. Const. amend. VI. A criminal defendant's right under the Speedy Trial Act is separate and distinct from his Sixth Amendment right to a speedy trial. *See United States v. Woolfolk*, 399 F.3d 590, 594-98 (4th Cir. 2005). The Sixth Amendment clock begins to run upon indictment when no prior arrest on the alleged offense is involved. *Dillingham v. United States*, 423 U.S. 64 (1975) (per curiam). In particular, the date of the indictment is the crucial date for a prisoner already incarcerated on a prior offense. *United States v. Manetta*, 551 F.2d 1352, 1354 (5th Cir. 1977).

Analysis of a Sixth Amendment speedy trial claim is governed by the Supreme Court's holding in *Barker v. Wingo*, which sets forth four factors to determining whether the right has been violated: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) the extent of prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

In addressing a speedy court violation claim under the Sixth Amendment, a court must first decide whether the length of the delay triggers a speedy trial inquiry. *United States v. Hall*,

551 F.3d 257, 271 (4th Cir. 2009). Notably, "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." *Barker*, 407 U.S. at 531. When the delay is over one year, it is presumptively prejudicial. However, "[u]ntil there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Barker*, 407 U.S. at 530. *See also Woolfolk*, 399 F.3d at 597 ("One year is the 'point at which courts deem the delay unreasonable enough to trigger the *Barker* [i]nquiry.' ") (*citing Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992)); *United States v. Brooks*, 66 F.3d 317 (4th Cir. 1995) (finding delay of eleven months is not inherently prejudicial); *United States v. Hammer*, C/A No. 94-5063, 1994 WL 644903, at *2 (4th Cir. Nov. 16, 1994) (unpublished) (holding seven-month delay is on the ordinary side of the one-year threshold). The first *Barker* factor "acts as a threshold requirement," and "[i]f the delay is not uncommonly long, the inquiry ends there." *United States v. Grimmond*, 137 F.3d 823, 827 (4th Cir. 1998). Here, assuming without deciding that the earliest date of September 14, 2016, is the correct start date, the court finds no violation of Defendants' Sixth Amendment rights to a speedy trial. At this time, Defendants are not even close to the one-year threshold. Having failed to clear the threshold requirement, Defendants cannot show a violation of their Sixth Amendment right.[9]

[9]Moreover, even when a delay exceeds one year, this does not, in itself, necessarily establish a violation of the defendant's rights to a speedy trial. *See Barker* at 533-36 (holding that more than a five year delay, while extraordinary, did not violate the defendant's right to a speedy trial). Defendants have made only a cursory argument as to the remaining *Barker* factors, and made no attempt to weigh the factors. The court notes, however, that it would have reached the same conclusion if it had considered the remaining *Barker* factors. "The reasons for a trial delay should be characterized as either valid, improper, or neutral. On this factor, a reviewing court must carefully examine several issues, specifically focusing on the intent of the prosecution." *Hall*, 551 F.3d at 272 (citation omitted). Here, the delay has stemmed from the undisputed complexity of the case, the voluminous discovery, and the number of defendants. Moreover, Defendants themselves have contributed to the delay by filing numerous pretrial motions. Clearly, there have been valid reasons for the trial delay. The third *Barker* factor addresses whether the defendants timely asserted their right to a speedy trial. *Barker*, 407 U.S. at 532. Defendants have done this, so this factor weighs in their favor. The final *Barker* factor requires the court to consider the prejudice to Defendants. *Id*. Courts assess prejudice in the light of the interests which the speedy trial right was designed to protect: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to

III. Conclusion

Based on the foregoing, Defendants' Motions to Dismiss (ECF Nos. 79 and 105) are **DENIED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
July 14, 2017

prepare his case skews the fairness of the entire system. *Id.* There are no specific allegations that Defendants' detention has been oppressive. As to the second interest, Defendants have asserted generalized concerns that would affect many individuals who are detained. And most importantly, Defendants have not pointed to any impairment to their defense resulting from any delay in their trial. Rather, Defendants appear to base their speedy trial claim solely on the fact that a delay occurred. Only one of the *Barker* factors weighs in Defendants' favor. Accordingly, the court finds their Sixth Amendment rights to a speedy trial were not violated.