No. 19-8000

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)

Reply on Petition for *Writ of Certiorari*

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Petitioner James Robert Peterson respectfully submits this Reply in support of his Petition for *writ of certiorari*.

ARGUMENT

Mr. Peterson will not repeat the arguments set forth in Sok Bun's reply brief (No. 19-1037) but will instead briefly offer three additional points.

First, to the extent that the Government claims as a universal proposition that "a criminal trial generally cannot commence until the trial court has resolved most, if not all, of the defendants' pretrial motions," [Opp. at 10], the Government oversteps. South Carolina state courts, for example, have no such requirement. *See* R. 4, S.C. R. Crim. Pro. Thus, defense motions that federal courts adjudicate before trial as a matter of convenience are often adjudicated midtrial as a matter of right in South Carolina, which has subscribed to the Interstate Agreement on Detainers. *See, e.g.*, *State v. Brown*, 736 S.E.2d 263, 269 (S.C. 2012) ("[T]he trial court properly denied Brown's motion to suppress at trial…."); *State v. Washington*, 370 S.E.2d 611, 611 (S.C. 1988) ("At an in camera hearing during trial, defendant's motion to suppress his statements for lack of voluntariness was granted."). South Carolina is not alone in adjudicating during or even after trial motions that are resolved pre-trial in the federal system. *See, e.g.*, *Judge v. State*, 524 S.E.2d 4, 5 (Ga. Ct. App. 1999) (describing

speedy-trial motion that was denied "[d]uring trial").[1] Yet the Government would have every defendant—as a matter of federal law—automatically unable to stand trial while a motion is pending, regardless as to how long a court might have a motion under advisement. *Contra, e.g.*, *State v. Roman*, 731 P.2d 1281, 1282-83 (Kan. 1987) ("Procrastination, whether it be prosecutorial or judicial, is not the fault of a defendant and should not be charged to him or her.").

Second, while the Government wants to harmonize the Interstate Agreement on Detainers Act with the federal Speedy Trial Act, [Opp. at 10-11], it has no answer as to why some state courts look to their *state* trial rules to understand the Interstate Agreement on Detainers—rather than the federal Speedy Trial Act. *See, e.g.*, *Vining v. State*, 637 So. 2d 921, 925 (Fla. 1994) ("[W]e will not grant greater dignity to the IAD's speedy trial time limit than to Florida's speedy trial rule…. Thus, in order to determine whether the trial court erred in denying Vining's motion to dismiss we must determine whether

[1] *See also Hill v. State*, 68 N.E.3d 1130 (Ind. Ct. App. 2016) (involving motion made "during trial" on statute-of-limitations grounds); *Lowe v. State*, 579 S.E.2d 728, 729 (Ga. 2003) (discussing availability of post-trial determination of challenge to the insufficiency of an indictment); *State v. Palser*, 469 N.W.2d 753, 756 (Neb. 1991) (noting that the trial court excused the jury to hold a hearing on the voluntariness of the defendant's confession); *Brown v. City of Danville*, 606 S.E.2d 523, 528 (Va. Ct. App. 2004) (involving pre-trial motion to suppress not ruled upon until the start of the sentencing hearing).

the procedures of Florida Rule of Criminal Procedure 3.191 (1984) were followed in this case." (citations omitted)).[2]

Third, the Government is wrong to claim that resolution of the Question Presented would not impact the outcome of this case. In the district court and in the Fourth Circuit, Mr. Peterson specifically disavowed any attempt to import the complicated tolling analysis under the Speedy Trial Act to the straightforward provisions of Interstate Agreement on Detainers Act ("IADA") and challenged the discrete continuances that the district court granted. *See* [App. 13a]. The Fourth Circuit, however, never engaged with the merits of that issue, taking the shortcut instead that the IADA and the Speedy Trial Act are inextricably linked. [App. 15a (holding that no separate IADA analysis was required if the IADA borrowed the Speedy Trial Act's tolling analysis and so holding)]. The Question Presented here calls for this Court to hold that the IADA does not borrow the analysis of the Speedy Trial Act. [Pet. i]. If Mr. Peterson prevails on that threshold question, a remand will be required so that the Fourth Circuit can review on the merits the discrete continuances that the district court granted, without reference to the Speedy Trial Act's framework. That secondary issue is not yet ripe for this Court. *See, e.g.*, *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012) ("Ours is a court of final review and not first

[2] Other states hold that resort to their state speedy trial rules is inapt. *See State v. Rieger*, 708 N.W.2d 630, 638 (Neb. 2006) (holding that date calculation under the Interstate Agreement on Detainers is not informed by state speedy-trial rule).

view…. In particular, when we reverse on a threshold question, we typically remand for resolution of any claims the lower courts' error prevented them from addressing."). But on remand, the Fourth Circuit could and should order a dismissal of these federal charges. This Petition matters.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: May 28, 2020

Respectfully submitted,

JAMES ROBERT PETERSON

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