No. 20-7207

IN THE SUPREME COURT OF THE UNITED STATES

MANUEL DE JESUS GORDILLO-ESCANDON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record

NICHOLAS L. MCQUAID
Acting Assistant Attorney General

CHRISTOPHER J. SMITH
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the lower courts erred in finding that exclusions based on an interlocutory appeal, pretrial motions, and ends-of-justice continuances rendered petitioner's trial timely under the Speedy Trial Act of 1974, 18 U.S.C. 3161 et seq.

2. Whether the lower courts erred in finding that petitioner was brought to trial within 120 non-tolled days of his arrival in federal custody, in compliance with Article IV of the Interstate Agreement on Detainers Act, 18 U.S.C. App. 2, at 411 (§ 2).

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-7207

MANUEL DE JESUS GORDILLO-ESCANDON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2-18) is not published in the Federal Reporter but is reprinted at 832 Fed. Appx. 158. A prior opinion of the court of appeals is not published in the Federal Reporter but is reprinted at 706 Fed. Appx. 119.

JURISDICTION

The amended judgment of the court of appeals was entered on October 19, 2020. A petition for rehearing was denied on November 10, 2020 (Pet. App. 1). The petition for a writ of certiorari was filed on January 20, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted of conspiring to possess with the intent to distribute 50 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B); possessing with intent to distribute 50 grams or more of a mixture or substance containing a detectible amount of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B); and possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A). Judgment 1; Indictment 1-4. He was sentenced to 120 months of imprisonment, to be followed by four years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 2-18.

1. On December 28, 2016, petitioner and a co-defendant traveled from Atlanta, Georgia, to Greenville County, South Carolina, with approximately 280 grams of methamphetamine to distribute to co-conspirators in South Carolina. C.A. App. 349, 351-356. Following a joint investigation between Homeland Security Investigations and South Carolina law enforcement, federal agents found petitioner in a hotel room with approximately half of the methamphetamine and two Glock 9mm handguns. Id. at 291-295, 298-299, 312, 318-319, 322. At the time of his arrest, petitioner had one handgun under his pillow, and the methamphetamine was in the hotel room's dresser. Id. at 291, 298.

On January 4, 2017, petitioner was indicted in state court in Greenville County, South Carolina. C.A. App. 38-40. Two months later, on March 14, 2017, a federal grand jury sitting in the District of South Carolina returned an indictment charging petitioner with conspiring to possess with the intent to distribute 50 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B); possessing with intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B); and possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1)(A). Indictment 1-4.

2. Under the Speedy Trial Act of 1974, 18 U.S.C. 3161 et seq., a defendant's trial must generally begin within 70 non-excludable days of his indictment or his appearance before a judicial officer, whichever occurs later. 18 U.S.C. 3161(c)(1). The Act excludes a number of periods of delay, including (1) any "delay resulting from any interlocutory appeal," 18 U.S.C. 3161(h)(1)(C), (2) any "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), and (3) any period of delay resulting from a continuance granted by the district court "if the judge granted such continuance on the basis of his 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 the court "sets forth, in the record of the case, either orally or in writing, its reasons for [that] finding," 18 U.S.C. 3161(h)(7)(A).

Separately, the Interstate Agreement on Detainers[1] -- which the United States joined through the Interstate Agreement on Detainers Act (IADA), 18 U.S.C. App. 2, at 410 (§ 1) -- sets out the procedures that apply when a jurisdiction wishes to prosecute a prisoner who is incarcerated in another jurisdiction. As relevant here, the IADA provides that when a jurisdiction requests custody of a defendant from another jurisdiction in order to try him, the receiving jurisdiction must bring the defendant to trial within 120 days of his arrival in the receiving jurisdiction. 18 U.S.C. App. 2, at 411 (§ 2 [Art. IV(c)]). That time period is subject to tolling "whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter." IADA, 18 U.S.C. App. 2, at 412 (§ 2 [Art. VI(a)]).

Here, petitioner first appeared in federal court on March 30, 2017. D. Ct. Docs. 24, 25. On May 15, 2017, the government filed a "Motion for Reciprocal Discovery." D. Ct. Doc. 41. The district court did not act on that motion, and on May 23, 2017, petitioner

[1] A "detainer" is "a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." United States v. Mauro, 436 U.S. 340, 359 (1978) (citation omitted); see Alabama v. Bozeman, 533 U.S. 146, 148 (2001).

moved to continue his trial to the following term of the district court, in August 2017. C.A. App. 135-136. The district court later made clear that its order granting a continuance to allow trial-preparation time for the defense was based on a finding that the ends of justice outweighed the public's interest in a speedy trial. Id. at 160-161.

On June 12, 2017, petitioner pleaded guilty in state court to trafficking between 100 grams and 200 grams of methamphetamine, in violation of S.C. Code Ann. § 44-53-375(C)(3) (Supp. 2016), and unlawfully carrying a weapon, in violation of S.C. Code Ann. § 16-23-20 (2015). C.A. App. 38-40, 481-482. Following his guilty plea in state court, on June 26, 2017, petitioner filed a motion to dismiss in federal court relying on the Speedy Trial Act and the Double Jeopardy Clause of the Fifth Amendment. Id. at 30-41. On July 25, 2017, the district court held a hearing on that motion and denied it from the bench. Id. at 159. With respect to the Speedy Trial Act claim, the district court explained that petitioner's "counsel joined in a continuance request on May 23rd, 2017, prior to the expiration of the speedy trial clock, [and] that request was granted for the ends of justice and more specifically for the effective preparation of counsel; therefore, the period of delay resulting from the continuance is excludable under 18, United States Code, Section 3161(h)." Id. at 156.

The following day, on July 26, 2017, petitioner filed a notice of appeal of the district court's denial of his motion to dismiss

on double-jeopardy grounds. D. Ct. Doc. 71. The same day, petitioner also filed a motion for a speedy trial and to sever his case from his co-defendants' case. C.A. App. 66-67. While that motion was pending, on October 18, 2017, petitioner filed another motion requesting that the district court stay further proceedings "pending receipt" of the Fourth Circuit's mandate. D. Ct. Doc. 90, at 2. The district court granted the stay motion the following day. D. Ct. Doc. 91 (Oct. 19, 2017).

On December 13, 2017, the court of appeals rejected petitioner's interlocutory appeal and affirmed. 706 Fed. Appx. 119. It issued its mandate on December 15, 2017, and this Court denied certiorari on June 24, 2019. 139 S. Ct. 2739. The district court docketed the mandate of the court of appeals on December 19, 2017, C.A. App. 78-79, and on the same day, petitioner withdrew the motion for a speedy trial and severance that he had filed on July 26, 2017, id. at 80. Then, on January 12, 2018, petitioner filed another motion to dismiss the prosecution for a violation of the Speedy Trial Act, and for the first time, petitioner also argued that the trial delay had violated the IADA. Id. at 83-91.

On January 19, 2018, the district court held a hearing on the motion and denied it from the bench. C.A. App. 180. The district court explained that the "upshot" of its denial of the motion was that, based upon petitioner's request for a continuance and his interlocutory appeal, petitioner "himself [wa]s the only party responsible for the delayed resolution of this case." Id. at 181.

Then, turning to the IADA, the district court found that any delay excludable under the Speedy Trial Act was also excludable under the IADA, and thus, there had been no violation of the IADA. Id. at 183.

At the same hearing, the government moved for a short continuance for both trial-preparation and plea-discussion purposes. C.A. App. 183-184. The district court granted the motion over petitioner's objection, finding that "the ends of justice outweigh the best interests of the public and the defendant in a speedy trial." Id. at 185. The court then scheduled jury selection for February 8, 2018, with the trial to begin February 12, 2018. Ibid. However, before those dates arrived, on February 5, 2018, petitioner filed a motion to reconsider his prior motion to dismiss. Id. at 105-108. The district court denied that motion on February 12, 2018. D. Ct. Doc. 134.

The jury for petitioner's trial was selected on February 8, 2018, D. Ct. Doc. 128, and petitioner's jury trial commenced on February 14, 2018, D. Ct. Doc. 135. The jury found petitioner guilty on all charged counts, D. Ct. Doc. 148 (Feb. 15, 2018), and the district court sentenced petitioner to 120 months of imprisonment, to be followed by four years of supervised release, Judgment 2-3.

3. The court of appeals affirmed in an unpublished opinion. Pet. App. 2-18. As relevant here, the court found that the timing

of petitioner's trial violated neither the Speedy Trial Act, see id. at 5-9, nor the IADA, id. at 9-11.

a. With regard to the Speedy Trial Act, the court determined that "after accounting for excludable days, [petitioner's] trial occurred within the time limits imposed by the [Act]." Pet. App. 5. It explained that while the Act "generally requires a defendant's trial to 'commence within seventy days . . . from the date the defendant has appeared before a judicial officer of the court in which such charge is pending,'" ibid. (quoting 18 U.S.C. 3161(c)(1)), it also "provides a list of delays for which time is excluded from the seventy-day clock," ibid. (citing 18 U.S.C. 3161(h)). The court identified four categories of excludable delays relevant to petitioner's case: (1) "'delay resulting from [an] interlocutory appeal,'" ibid. (quoting 18 U.S.C. 3161(h)(1)(C)) (brackets in original); (2) "delays 'resulting from . . . pretrial motion[s], from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion,'" ibid. (quoting 18 U.S.C. 3161(h)(1)(D)) (brackets in original); (3) "'delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court,'" ibid. (quoting 18 U.S.C. 3161(h)(1)(H)); and (4) "delay for which 'the judge granted [a] continuance on the basis of his findings that the ends of justice served by taking such action outweigh[ed] the best interests of the public and the defendant in a speedy trial,'"

id. at 5-6 (quoting 18 U.S.C. 3161(h)(7)(A)) (brackets in original). Applying these exclusions to the particular circumstances of this case, the court found that "at a minimum 245 of the 315 days between first appearance and trial [were] excludable." Id. at 6.

The court of appeals rejected petitioner's arguments to the contrary. See Pet. App. 7-11. First, the court found that the district court properly entered the January 19, 2018, ends-of-justice continuance that excluded 16 days until jury selection began on February 8, 2018. Id. at 7-8. The court observed that the government had requested the delay so that (1) petitioner could "talk with law enforcement," (2) the government could prepare for trial, and (3) the government could "evaluate [petitioner's] statements." Id. at 8 (citation omitted). And the court noted that the Speedy Trial Act recognizes that one factor for consideration in granting such a continuance is "'[w]hether the failure to grant such a continuance . . . would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation,'" and that "[t]he government provided three reasons all connected to legitimate trial preparation." Id. at 6-7 (quoting 18 U.S.C. 3161(h)(7)(B)(iv)) (first brackets in original).

Turning to the procedural aspects of the district court's findings on the issue, the court of appeals acknowledged that this Court "has made clear that 'the Act requires express findings' and

'does not permit those findings to be made on remand,'" while "provid[ing] some flexibility and allow[ing] district courts to put findings on the record either at the grant of the continuance or at the 'rul[ing] on a defendant's motion to dismiss under § 3162(a)(2).'" Pet. App. 7 (quoting Zedner v. United States, 547 U.S. 489, 506-507 (2006))(second brackets in original). And although the court of appeals found the district court's procedure here "not ideal," it observed that "the reasons the district court found that the ends of justice were served by the continuance were also crystal clear from the context." Id. at 7-8. The court of appeals accordingly found that "the grant of the ends-of-justice continuance viewed in the context of the hearing meets the [Act's] procedural requirements, and the days between January 19 and February 8 are excluded." Id. at 8.

Second, the court of appeals determined that six days should be excluded from the speedy trial clock based on the government's May 15, 2017, request for reciprocal discovery. Pet. App. 8-9. The court explained that the reciprocal-discovery filing was a qualifying motion "because it requested direction on behalf of one party as to the other from the court." Id. at 8 (citing Melendez v. United States, 518 U.S. 120, 126 (1996)). While the court noted that "'motions that require no hearing' -- such as this one -- cannot toll the clock for more than thirty days," it found that "six days are appropriately excluded in this case." Id. at 9 (quoting Henderson v. United States, 476 U.S. 321, 329 (1986)).

Finally, the court of appeals "f[ou]nd no merit in" petitioner's other Speedy Trial Act claims. Pet. App. 9. It then summed up by "tak[ing] a step back." Ibid. It emphasized that "[t]he great majority of the delays in this case were not attributable to the court, nor were they attributable to the government." Ibid. "The delays resulted in significant measure from the flurry of motions filed by [petitioner] and [his] interlocutory appeal." Ibid. And it found "no Speedy Trial Act violation in [petitioner's] case." Ibid.

b. The court of appeals also found no violation of the timing requirements of the IADA. Pet. App. 9-11. The court explained that while the IADA requires, in relevant part, that "'trial . . . be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State,'" Id. at 9-10 (quoting 18 U.S.C. App. 2, at 411 (§ 2 [Art. IV(c)])), it "'contains tolling provisions for certain events,'" id. at 10 (quoting United States v. Peterson, 945 F.3d 144, 153 (4th Cir. 2019), cert. denied, 141 S. Ct. 132 (2020)). Specifically, the court observed that the IADA provides for tolling when "'[f]or good cause shown in open court,' a court 'may grant any necessary or reasonable continuance,'" ibid. (quoting IADA, 18 U.S.C. App. 2, at 411 (§ 2 [Art. IV(c)])), and "'whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter,'" ibid. (quoting IADA, 18 U.S.C. App. 2, at 412 (§ 2 [Art. VI(a)])).

The court of appeals noted its prior observation that although the Speedy Trial Act "'and IADA may have slightly different wordings, their time clocks have broadly harmonious aims,' so the statute should be considered in pari materia with the [Act]." Pet. App. 10 (quoting Peterson, 945 F.3d at 155; citing United States v. Odom, 674 F.2d 228, 231 (4th Cir.), cert. denied, 457 U.S. 1125 (1982)). It accordingly reasoned that "the ends-of-justice continuances that toll the [Act] clock also toll the IADA clock '[b]ecause the IADA's 'good cause' standard is not materially different from the [Act's] "ends-of-justice" standard.'" Ibid. (quoting Peterson, 945 F.3d at 154) (second brackets in original). "Likewise," it continued, "the 'unable to stand trial' provision of the IADA applies to 'those periods of delays caused by the defendant's own actions.'" Ibid. (quoting Peterson, 945 F.3d at 154). The court observed that it had previously determined that "this includes periods 'when a district court is adjudicating pretrial motions raised by the defense.'" Ibid. (quoting Peterson, 945 F.3d at 154). And the court explained that "[t]he same logic leads us to exclude the time necessary to resolve the defendant's interlocutory appeal." Ibid.

The court of appeals accordingly found that "these provisions justify stopping the IADA clock for all 245 days excluded under the [Speedy Trial Act]." Pet. App. 11. And it observed that such tolling under the IADA "brings [petitioner's] trial date well

within 120 days of his arrival in federal custody as required." Ibid.

ARGUMENT

Petitioner contends (Pet. 13-24) that the lower courts erred in denying his motion to dismiss the indictment for violation of the Speedy Trial Act because, in his view, courts are divided on (1) when an interlocutory appeal ends for Speedy Trial Act purposes, (2) whether certain discovery requests qualify as "motions" under the Act, and (3) how to evaluate ends-of-justice continuances. Petitioner further contends (Pet. 25-32) that the lower courts erred in denying his motion to dismiss for violation of the IADA and that courts are divided on how to interpret the IADA's "unable to stand trial" provision. Petitioner's contentions lack merit, the decision of the court of appeals is correct, and petitioner's case does not implicate any conflict in the courts of appeals that warrants this Court's review. No further review is warranted.

1. Petitioner primarily challenges (Pet. 13-24) the lower courts' calculation that less than 70 non-excludable days under the Speedy Trial Act had passed between his initial appearance and the beginning of his trial. Petitioner's challenge is mistaken, and no conflict exists in the courts of appeals that warrants this Court's review.

a. The Speedy Trial Act requires a criminal defendant's trial to commence within 70 non-excludable days of his indictment or

initial appearance before a judicial officer, whichever occurs later, 18 U.S.C. 3161(c)(1). In this case, petitioner was indicted on March 14, 2017, and first appeared in court on March 30, 2017. Accordingly, it is undisputed that the speedy trial clock began to run on March 30, 2017. See Pet. 33.

Forty-five days elapsed on the speedy trial clock before the government filed a motion for reciprocal discovery on May 15, 2017.[2] At that point, the clock was stopped under Section 3161(h)(1)(D), which excludes any "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). As this Court held in United States v. Tinklenberg, 563 U.S. 647 (2011), Section 3161(h)(1)(D) "stops the speedy trial clock from running automatically upon the filing of a pretrial motion irrespective of whether the motion has any impact on when the trial begins." Id. at 653; see Bloate v. United States, 559 U.S. 196, 199 n.1, 206 (2010) (explaining that Section 3161(h)(1)(D) is an "automatic" exclusion, applicable "regardless of the specifics of the case" and "without district court findings"). The clock resumes once the motion is heard or

[2] As petitioner recognizes (Pet. 33), March 31 is the first day on the Speedy Trial Act Clock. See, e.g., United States v. Stoudenmire, 74 F.3d 60, 63 (4th Cir. 1996) (explaining that "the clock begins to run" on the day "following" the indictment or initial appearance). Petitioner asserts (Pet. 33) that only 44 days elapsed between March 31 and May 14, but he appears to have erroneously excluded either March 31 or May 14 from his calculations.

otherwise resolved. 18 U.S.C. 3161(h)(1)(D). Here, while the docket did not reflect a date on which the motion was resolved, the court of appeals found that the discovery motion tolled the clock for six days, Pet. App. 8, from May 15 to May 20, 2017.

Another two days then elapsed on the Speedy Trial Clock (bringing the total elapsed days to 47), at which point petitioner moved for a continuance on May 23, 2017. C.A. App. 135-136. Petitioner asked the court to continue his trial to the following term of the district court, in August 2017, to ensure that he was ready for trial. Ibid. The court granted that request, later clarifying that it had granted the continuance "for the ends of justice and more specifically for the effective preparation of counsel." Id. at 156; see also 160-161 (amending the order to reflect that the judge had determined that the need for trial preparation outweighed the public's interest in a speedy trial). That continuance likewise stopped the speedy trial clock. The Act excludes "[a]ny period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or * * * the Government, if the judge granted such continuance on the basis of his 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," so long as the court "sets forth, in the record of the case, either orally or in writing, its reasons for [that] finding." 18 U.S.C. 3161(h)(7)(A). The Speedy Trial Act specifically indicates that

one factor a judge should consider is whether counsel for the defendant or the government needs additional time to effectively prepare for the case. 18 U.S.C. 3161(h)(7)(B)(iv).

On July 26, 2017, before the clock had even resumed, petitioner filed a motion for a speedy trial and to sever his case, again triggering the Speedy Trial Act exclusion for pending pretrial motions. C.A. App. 66-67; see also D. Ct. Doc. 68 (July 25, 2017) (district court's grant of another ends-of-justice continuance through October 2017). On the same date, petitioner filed a notice of appeal, D. Ct. Doc. 71, thereby triggering another, independent Speedy Trial Act exclusion -- namely, the one for the "delay resulting from any interlocutory appeal." 18 U.S.C. 3161(h)(1)(C). And, on October 19, 2017, petitioner reinforced this delay of the trial for his interlocutory appeal, asking the court to stay the district court proceedings "pending receipt" of the mandate of the court of appeals. D. Ct. Doc. 90, at 2. The district court granted his request. D. Ct. Doc. 91.

The speedy trial clock remained tolled by both the exclusion for interlocutory appeals and the exclusion for pending pretrial motions until December 19, 2017, C.A. App. 78-79, when the district court docketed the mandate in the appeal and petitioner withdrew his pending motions, id. at 80.[3] Then, after another 23 days

[3] At least one court of appeals has held that the pendency of a certiorari petition continues the excluded time period for an interlocutory appeal. See United States v. Pete, 525 F.3d 844, 849-853 (9th Cir.), cert. denied, 555 U.S. 926 (2008). The government did not advance that argument below, but -- under that

elapsed, the clock was again tolled because petitioner renewed his motion to dismiss under the Speedy Trial Act. 18 U.S.C. 3161(h)(1)(D); see United States v. Bolden, 700 F.2d 102, 103 (2d Cir. 1983) (recognizing that "the statutory language" mandates that the speedy trial clock excludes the time during which a motion to dismiss under the Speedy Trial Act is pending). At the January 19, 2018 hearing on the renewed motion, the district court entered an additional ends-of-justice continuance based on the government's need to prepare for trial, which tolled the speedy trial clock through voir dire, C.A. App. 185; see also 18 U.S.C. 3161(h)(7)(A), which marks the official start of trial under the Speedy Trial Act. See, e.g., United States v. Brown, 819 F.3d 800, 810 (6th Cir. 2016); United States v. Rodriguez, 63 F.3d 1159, 1164 (1st Cir.) (collecting cases), cert. denied, 516 U.S. 1032 (1995).

As those calculations show, when voir dire began on February 8, 2018, at most 70 days had elapsed -- 47 pre-appeal days and 23 additional post-appeal days -- and petitioner's trial was timely. Indeed, the calculations represent the minimum amount of time that could be properly excluded under the Speedy Trial Act. Pet. App. 6 ("[A]t a minimum 245 of the 315 days between first appearance and trial" were "excludable"). For example, the court of appeals found that only six days should be excluded for the pendency of

---

view -- petitioner's Speedy Trial Act clock did not resume until June 24, 2019, when this Court denied certiorari review of his interlocutory appeal. 139 S. Ct. 2739.

the government's reciprocal discovery motion, Pet. App. 8-9, based on Henderson v. United States, 476 U.S. 321 (1986), where this Court suggested that simple pretrial motions that do not require a hearing should generally be taken under advisement for "considerably less than 30 days," id. at 329 (quoting S. Rep. No. 212, 96th Cong., 1st Sess. 34 (1979)). But that language in Henderson does not bear directly on a situation like this one, where the docket does not reflect whether or when the motion was taken under advisement, or even when it was resolved. And this Court has elsewhere made clear that the exclusion for the time "from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, [the] motion," 18 U.S.C. 1361(h)(1)(D), applies "automatically," and without consideration of how much time would be reasonable for disposing of the motion, or whether the motion had any "impact on when the trial begins." Tinklenberg, 563 U.S. at 653; see Henderson, 476 U.S. at 329.

b. Petitioner's contention (Pet. 23-24) that more than 70 days elapsed before his trial lacks merit. While petitioner argues (Pet. 23) that the ends-of-justice continuance that the district court granted in January 2018 was deficient, the district court made an express finding that "the ends of justice outweigh the best interests of the public and the defendant in a speedy trial." C.A. App. 185. And, as the court of appeals recognized, while the brevity of the district court's analysis was "not ideal," "the

reasons the district court found that the ends of justice were served by the continuance were also crystal clear from the context," namely that the government needed a short continuance for trial preparation -- one of the bases for such continuances that is specifically identified in the statute. Pet. App. 7-8; see 18 U.S.C. 3161(h)(7)(B)(iv).

Petitioner is also incorrect in his assertion (Pet. 24) that the court of appeals erred by "implicitly [holding] excludable the 22 days between the district court's December 20, 2017 docketing of the appellate mandate and [petitioner's] January 12, 2018 motion to dismiss." Nothing in the court of appeals' decision suggests that it accepted the district court's contention that the period is excludable, and even counting all 23 days between December 20, 2017 and January 12, 2018, petitioner's trial still began no more than 70 non-excludable days after his indictment. See pp. 13-17, supra.

2. Petitioner contends (Pet. 13-22) that this Court should review the Speedy Trial Act calculations in his case, asserting that the courts of appeals are divided on when the exclusionary period for an interlocutory appeal ends, what types of motions provide the basis for excluding time, and how to evaluate ends-of-justice continuances. While some limited, stale disagreement exists in the courts of appeals, none of those issues warrants this Court's review.

a. Petitioner first argues (Pet. 14-15) that the circuit courts are divided on the issue of whether the issuance of the appellate mandate, or the district court's docketing of the mandate, provides the end point for time excluded for an interlocutory appeal. See 18 U.S.C. 3161(h)(1)(C).

While petitioner is correct that the courts of appeals appear divided on this issue,[4] this division has had little practical

[4] Compare United States v. Long, 900 F.2d 1270, 1276 (8th Cir. 1990) (agreeing with the government that "the relevant date is the date the mandate was received by the clerk of the district court"); United States v. Lasteed, 832 F.2d 1240, 1243 (11th Cir. 1987) (same), cert. denied, 485 U.S. 1022 (1988); and United States v. Ferris, 751 F.2d 436, 439 (1st Cir. 1984) (same), with United States v. Lloyd, 125 F.3d 1263, 1265 n.1 (9th Cir. 1997) (relevant date "is the date the mandate issues and not the date that the district court receives it"); United States v. Kington, 875 F.2d 1091, 1109 (5th Cir.) (same), supplemented on denial of petitions for rehearing, 878 F.2d 815 (5th Cir. 1989) (per curiam); United States v. Rivera, 844 F.2d 916, 920-922 (2d Cir. 1988) (agreeing with the government's position (at that time) that the Speedy Trial Act clock resumed when the court of appeals issued its mandate, not on the date that the court of appeals issued its order); United States v. Crooks, 826 F.2d 4, 5 (9th Cir. 1987) (modifying, on denial of petitions for rehearing, its prior decision that "the action occasioning retrial became final when [the] mandate was received by the district court" in light of controlling circuit precedent that the clock resumed running with the issuance of the mandate); United States v. Scalf, 760 F.2d 1057, 1059 (10th Cir. 1985) (as amended on denial of rehearing) ("period begins to run when the mandate of the appellate court is issued"); United States v. Felton, 811 F.2d 190, 198 (3d Cir.) (en banc) (same), cert. denied, 483 U.S. 1008 (1987); United States v. Robertson, 810 F.2d 254, 259 & n.6 (D.C. Cir. 1987) (same); United States v. Rush, 738 F.2d 497, 509 (1st Cir. 1984) (same), cert. denied, 470 U.S. 1004 (1985); and United States v. Ross, 654 F.2d 612, 616 (9th Cir.) (clock resumes running on the date the court of appeals issues its mandate, not the date on which the court of appeals files its decision), cert. denied, 454 U.S. 1090 (1981), and 455 U.S. 926 (1982); see United States v. Bond, 956 F.2d 628, 631-632 (6th Cir. 1992) (noting disagreement); see also Committee on the

effect and the disagreement is evident mostly in dicta. In the majority of the cases petitioner cites, the trials occurred within 70 non-excludable days, even assuming the continuance for the interlocutory appeal ended at the earliest possible date. See, e.g., United States v. Crooks, 826 F.2d 4, 5 (9th Cir. 1987) (modifying prior decision on denial of petitions for rehearing); United States v. Rush, 738 F.2d 497, 509 (1st Cir. 1984), cert. denied, 470 U.S. 1004 (1985); United States v. Ross, 654 F.2d 612, 616 (9th Cir.), cert. denied, 454 U.S. 1090 (1981), and 455 U.S. 926 (1982). Indeed, the only case cited by petitioner in which the timeliness of the defendant's trial unambiguously turned on whether the court adopted the "issuance of mandate" rule or the "receipt of mandate" rule is the Eleventh Circuit's decision in United States v. Lasteed, 832 F.2d 1240 (1987), cert. denied, 485 U.S. 1022 (1988), which involved an unusual circumstance where, as a result of the change of venue, the district court in Florida did not receive the Fifth Circuit's mandate until more than two months after the mandate had issued. Id. at 1241.

Administration of Criminal Law, Judicial Conference of the United States, Guidelines to the Administration of the Speedy Trial Act of 1974, as Amended (1985), 106 F.R.D. 271, 281 (relevant date under Section 3161(e) is "at such time as the district court receives the mandate of the court of appeals"); id. at 288 (relevant date under Section 3161(h)(1)(E) is the "[d]ate the district court receives the mandate or order of the court of appeals").

Regardless, this case would be a poor vehicle for considering this issue for at least three reasons. First, the court below neither analyzed nor even mentioned the issue in its unpublished decision. Second, the entire time period from the filing of petitioner's notice of appeal on July 26, 2017, to the district court's docketing of the mandate on December 19, 2017, was properly excluded from the speedy trial clock not only because of petitioner's interlocutory appeal, but also because of petitioner's pending motion for a speedy trial and a severance, see p. 16, supra, meaning the issue is not outcome determinative. And, third, even if the decision below did implicitly implicate the question of when the clock restarts after an interlocutory appeal, petitioner himself moved the district court in this case to stay further proceedings "pending receipt" of the Fourth Circuit's mandate. D. Ct. Doc. 90, at 2. Having asked the district court to stay its proceedings until it received the mandate from his interlocutory appeal, petitioner cannot now complain that the court deemed the period up to receipt of the mandate a period of "delay resulting from [the] interlocutory appeal." 18 U.S.C. 3161(h)(1)(C); see 18 U.S.C. 3161(h)(2).

b. Petitioner is also mistaken in his contention (Pet. 15-19), that review is warranted because the decision below conflicts with decisions of other courts regarding whether a motion for reciprocal discovery creates excludable time under Section 3161(h)(1)(D). To the extent any disagreement existed in the

circuits on this issue, it was resolved by this Court's decision in United States v. Tinklenberg, supra.

Petitioner relies (Pet. 16-17) on United States v. Mentz, 840 F.2d 315 (1988), in which the Sixth Circuit concluded that a defendant's discovery motion did not create excludable time because it found "no affirmative evidence in the record that the district court ever considered or ruled on the motion." Id. at 328. Petitioner also relies (Pet. 17-18) on cases from the Fifth, Ninth, and Tenth Circuits that he claims differ in their approaches to how much time to exclude based on a pro forma motion. See, e.g., United States v. Sutter, 340 F.3d 1022, 1032-1033 (9th Cir. 2003), cert. denied, 541 U.S. 950 (2004) (finding that time was excludable where an identifiable motion was pending and the district court had continued action on the motion until an event certain, such as a future hearing date); United States v. Franklin, 148 F.3d 451, 455 (5th Cir. 1998) (explaining that, in some circumstances, the filing of a response to a discovery motion may count as "prompt disposition" of that motion).

Petitioner disregards, however, that each of the cases he cites (Pet. 17-19) was decided prior to Tinklenberg. In Tinklenberg, this Court held that Section 3161(h)(1)(D) "stops the speedy trial clock from running automatically upon the filing of a pretrial motion irrespective of whether the motion has any impact on when the trial begins," 563 U.S. at 653, which undermines any potential reliance on those decisions for the proposition that it

was inappropriate to exclude six days from the speedy trial clock based on the government's discovery motion. Petitioner briefly suggests (Pet. 16) that, in the Sixth Circuit, "a request for reciprocal discovery -- with no actual dispute resulting in a judicial hearing or ruling -- does not count as a 'motion' for [Speedy Trial Act] purposes." But the only support he offers is United States v. Mentz, supra, which recognized that the discovery request at issue there was a "motion," yet concluded that it "did not trigger the statutory exclusion[]" because the "district court never held a hearing or ruled on the motion." Pet. 16-17 (quoting Mentz, 840 F.2d at 329). That conclusion is not compatible with Tinklenberg. See 563 U.S. at 653.

c. Finally, review is likewise unwarranted based on petitioner's assertions (Pet. 19-22) that courts differ in their approach to open-ended ends-of-justice continuances and the manner in which a court must place its findings about ends-of-justice on the record. This case does not implicate a conflict in the circuits on either issue.

With respect to open-ended continuances, petitioner claims that some courts of appeals permit such continuances, while the Ninth Circuit requires every continuance to be "'specifically limited in time,'" and "[t]he Sixth Circuit agrees." Pet. 20 (quoting United States v. Jordan, 915 F.2d 563, 565 (9th Cir. 1990)). But petitioner does not explain how his case implicates any such disagreement. The court granted the continuance that the

government sought on January 19, 2018 to a date certain -- February 8, 2018, when voir dire began. C.A. App. 185. And while petitioner himself sought and obtained an ends-of-justice continuance to the August term, rather than a date certain, see p. 15, supra, the Ninth Circuit has made clear that a defendant who seeks a continuance, and who does not attempt to withdraw the continuance or seek a particular trial date, cannot then complain that the grant of the continuance amounted to non-excludable delay, see United States v. Shetty, 130 F.3d 1324, 1328-1330 (1997), cert. denied, 523 U.S. 1078 (1998). Meanwhile, the Sixth Circuit case that petitioner cites (Pet. 20) lists the indeterminate length of the alleged ends-of-justice continuance as just one of a number of factors suggesting that the continuance in question did not toll the speedy trial clock -- chief among them, the lack of any evidence that a continuance was granted on the date it allegedly began. United States v. Crawford, 982 F.2d 199, 205 (6th Cir. 1993); see id. at 205 n. 1 (explicitly declining to address the question of whether a court may infer that an open-ended continuance was granted for a "reasonable" period). Accordingly, petitioner does not point to any court of appeals that would have invalidated the ends-of-justice continuance that he himself requested in this case.

Petitioner's contention (Pet. 20-22) that the courts of appeals are in conflict on the question of how a record should reflect the district court's basis for granting an ends-of-justice

is likewise misplaced. None of the decisions that petitioner cites demonstrates a conflict that might warrant this Court's review. For example, in United States v. Bryant, 523 F.3d 349 (D.C. Cir. 2008), the district court continued a trial from October 28, 2005, to February 2006, but the court "made no express findings supporting [an ends-of-justice] continuance" at that time. Id. at 361. When the defendant moved to dismiss the indictment for a Speedy Trial Act violation, the court stated that it "thought [it] had probably made a finding that the time period * * * was waived in the interest of justice to coordinate the schedules of the prosecutor, the two defense lawyers, and the Court." Id. at 360 (brackets, citation, and internal quotation marks omitted). The D.C. Circuit's conclusion that "the passing reference to the 'interest of justice' made by the trial judge at the [Speedy Trial Act] hearing does not indicate that the judge seriously considered" the requisite factors, id. at 361, would not control the substantially different circumstances here, where the district court made an express finding that an ends-of-justice continuance was appropriate and the reasons for that finding were "crystal clear from the context," Pet. App. 8.

Petitioner similarly errs in suggesting (Pet. 21-22) that the Second and Ninth Circuits would necessarily reach a different conclusion from the court below. As to the Second Circuit, petitioner relies (Pet. 21-22) only on a 1985 opinion articulating the view -- subsequently undermined by Zedner v. United States,

547 U.S. 489 (2006) -- that "time may not be excluded based on the ends-of-justice unless the district court indicates at the time it grants the continuance that it is doing so upon a balancing of the factors specified by section 3161(h)(8)." United States v. Tunnessen, 763 F.2d 74, 78 (2d Cir. 1985) (emphasis added); see Zedner, 547 U.S. at 506-507 (suggesting that findings made at the time the continuance is granted may be "only in the judge's mind," so long as they are "put on the record by the time a district court rules on [the] motion to dismiss" under the Speedy Trial Act). And as to the Ninth Circuit, petitioner's reliance (Pet. 22) on United States v. McCarns, 900 F.3d 1141 (9th Cir. 2018), cert. denied, 139 S. Ct. 926 (2019), is undercut by the fact that the decision upheld the district court's reference to "local codes" defining excludable time as a sufficient finding for an ends-of-justice continuance. Id. at 1145. Petitioner accordingly identifies no circuit that would necessarily have required dismissal in the circumstances of this case.

3. Petitioner additionally argues (Pet. 25-32) that the court of appeals erred in finding his trial timely under the IADA. Petitioner's argument lacks merit, and, although some dated disagreement exists among federal courts on the question presented, the division is neither entrenched nor significant enough to warrant certiorari review. Indeed, this Court has previously denied petitions relying on the same decisions to allege a circuit conflict -- see Peterson v. United States, 141 S. Ct.

132 (2020) (No. 19-8000); Neal v. United States, 558 U.S. 1093 (2009) (No. 09-5767) -- and the disagreement has grown even more stale since.

a. Section 2 of the IADA provides that when a jurisdiction wishes to try a defendant that is imprisoned in another jurisdiction, it may request custody to do so, but -- once it obtains custody -- the receiving jurisdiction must bring the defendant to trial within 120 days. 18 U.S.C. App. 2, at 411 (§ 2 [Art. IV(c)]). Like the Speedy Trial Act, the IADA allows this time to be tolled. In particular, it provides that the court may toll the clock "whenever and for as long as the prisoner is unable to stand trial." 18 U.S.C. App. 2, at 412 (§ 2 [Art. VI(a)]).

Although the IADA does not define the phrase "unable to stand trial," in Article VI(a), it is naturally understood to cover those periods when circumstances make it impossible or impractical to move forward with a defendant's trial. The pendency of petitioner's interlocutory appeal -- a period during which petitioner himself sought a stay in the district court pending the appeal's potentially case-dispositive outcome, D. Ct. Doc. 90, at 1 -- is one such circumstance. The exclusion likewise encompasses the time it took for the district court to resolve petitioner's pretrial motions; the Federal Rules of Criminal Procedure recognize that a criminal trial generally cannot begin until the trial court has resolved such motions or found good cause to defer their resolution. See Fed. R. Crim. P. 12(d) (providing that the

trial "court must decide every pretrial motion before trial unless it finds good cause to defer a ruling").

Accordingly, the court below properly determined that the IADA's 120-day time limit did not expire before the beginning of petitioner's trial. Although petitioner argued below that the IADA clock started on June 14, 2017, when the Federal Government lodged a detainer with South Carolina, C.A. App. 89, he now asserts (Pet. 30) only that the clock began on July 25, 2017, when he made his first appearance in federal court after the issuance of the detainer. Even calculating from the earlier date, no more than 239 days passed between June 14, 2017 and the start of voir dire on February 8, 2018. And even excluding only the time during which petitioner's interlocutory appeal was pending -- a period when petitioner himself sought a stay on the theory that the district court did not have jurisdiction to proceed to trial -- petitioner's trial occurred well before the IADA's 120-day period expired. That is true regardless of whether the appeal terminated when the mandate issued on December 13, 2017 (when 139 days had passed since the appeal was noticed) or when the appeal was docketed, on December 19, 2017 (when 145 days had passed). Either way, no more than 100 days had elapsed on the IADA clock when petitioner's trial began.

Petitioner's contrary arguments lack merit. Petitioner primarily suggests (Pet. 31) that the court of appeals erred in supporting its IADA tolling decision in part on the view that the

IADA should be "considered in pari materia with the [Speedy Trial Act]." Pet. App. 10. According to petitioner (Pet. 31), the two statutes should not be interpreted together because they "use different language." But the two laws -- which were passed within five years of each other, see United States v. Mauro, 436 U.S. 340, 356 n.24 (1978) -- address the same subject matter and share a common purpose. See Reed v. Farley, 512 U.S. 339, 346 & n.6, 353 (1994) (referring repeatedly to the IADA's "speedy trial provisions" and "speedy trial claims" under those provisions). Accordingly, the courts of appeals have generally found that Congress intended for the laws to be interpreted harmoniously to exclude similar periods of time. See Pet. App. 10; accord United States v. Peterson, 945 F.3d 144, 155 (4th Cir. 2019), cert. denied, 141 S. Ct. 132 (2020)); United States v. Collins, 90 F.3d 1420, 1428 & n.4 (9th Cir. 1996); United States v. Cephas, 937 F.2d 816, 819 (2d Cir. 1991), cert. denied, 502 U.S. 1037 (1992); see also Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 738-739 (1989) (Scalia, J., concurring in part and concurring in the judgment) (relying on "the rudimentary principle[] of construction * * * that, where text permits, statutes dealing with similar subjects should be interpreted harmoniously"). Petitioner asserts that interpreting the two Acts in harmony will chill zealous defense representation, but it is unclear why interpreting tolling provisions in harmony with the Speedy Trial Act -- which protects

a defendant's and the public's rights to a speedy trial -- would chill defense representation.

b. Petitioner contends (Pet. 26-30) that review is warranted to resolve a conflict among federal and state courts over the interpretation of when a defendant is "unable to stand trial" under Article VI(a) of the IADA. The alleged conflict, however, is not squarely implicated by this case. As explained, even excluding only the period during which petitioner's interlocutory appeal was pending, petitioner was tried before the IADA's 120-day clock expired. Yet petitioner does not cite any cases concluding that the IADA clock must continue to run during the pendency of an interlocutory appeal, let alone cases addressing the situation where -- as here -- the defendant himself sought and obtained a stay of the district court proceedings during that time on the ground that the appeal should be resolved first.

Instead, petitioner relies on purported disagreement in the circuits as to whether courts may exclude the time for pretrial motions. Any such disagreement is not outcome determinative, and -- even if it were -- the alleged conflict would not warrant this Court's review. A clear majority of the federal courts of appeals have interpreted the tolling provision in Article VI(a) of the IADA to permit courts to exclude any period when the trial cannot reasonably go forward, such as the time when a district court is adjudicating pretrial motions raised by the defense. See United States v. Ellerbe, 372 F.3d 462, 468-469 (D.C. Cir. 2004); United

States v. Sawyers, 963 F.2d 157, 162 (8th Cir.), cert. denied, 506 U.S. 1006 (1992); United States v. Johnson, 953 F.2d 1167, 1171-1172 (9th Cir.), cert. denied, 506 U.S. 879 (1992); Cephas, 937 F.2d at 821 (2d Cir.); United States v. Dawn, 900 F.2d 1132, 1136 (7th Cir.), cert. denied, 498 U.S. 949 (1990). Petitioner suggests (Pet. 26-27) that the Fifth Circuit's decision in Birdwell v. Skeen, 983 F.2d 1332 (1993), and the Sixth Circuit's decision in Stroble v. Anderson, 587 F.2d 830 (1978), cert. denied, 440 U.S. 940 (1979), reflect disagreement with the majority approach because both courts would limit tolling to situations in which the defendant was physically or mentally incapable of standing trial. But petitioner overreads those decisions, and to the extent they reflect any dated disagreement in the circuits, it does not warrant the Court's review.

In Birdwell, the defendant was delivered from federal custody to Texas authorities for trial. 983 F.2d at 1334. The defendant filed several pretrial motions, including a motion to dismiss, the resolution of which delayed the start of trial. Ibid. On habeas review, the Fifth Circuit concluded that the delays associated with those motions did not toll the IADA. The court first found that the continuance granted by the trial court while considering the motion to dismiss did not comply with the IADA's procedural requirements that a continuance be "for good cause shown in open court, the prisoner or his counsel being present." Id. at 1339 (citation omitted); see 18 U.S.C. App. 2, at 411 (§ 2 [Art.

IV(c)]). The court also took the view that Article VI(a)'s tolling provision did not apply, stating that before the enactment of the IADA, the phrase "unable to stand trial" referred only to a defendant's physical or mental ability to stand trial, and declining to expand the phrase "to encompass legal inability due to the filing of motions or requests." Birdwell, 983 F.2d at 1340-1341.

The principal question in Stroble was whether a state trial court's decision to grant a motion for a continuance without the defendant's knowledge or consent satisfied the Article IV(c) requirement that a continuance be granted "in open court." 587 F.2d at 839. The Sixth Circuit concluded that it did not. Id. at 838-840. In a preliminary portion of its analysis, the court also stated that the record failed to disclose any determination by the state courts that the defendant was "unable" to stand trial, observing that defendant was in the jurisdiction of the trial court and that no showing had been made that he was physically or mentally disabled. Id. at 838.

The decisions in Birdwell and Stroble do not address delay occasioned by an interlocutory appeal. Regardless, even with respect to the specific question they addressed -- tolling based on pretrial motions -- they do not represent a division of authority sufficiently clear, entrenched, or important to require this Court's review. After Birdwell and Stroble were decided, this Court held that violations of the IADA's 120-day limit do not

support federal habeas corpus relief without, inter alia, a showing of prejudice. See Reed, 512 U.S. at 342, 353; id. at 356-358 (Scalia, J., concurring in part and concurring in the judgment). As a result, federal courts of appeals are now most likely to address the IADA in federal prosecutions of prisoners incarcerated in other jurisdictions and transferred to federal custody for trial. And neither Birdwell nor Stroble arose in that context.

While the Fifth Circuit in Birdwell addressed Article VI(a)'s application to periods when a court adjudicates defense pretrial motions, it did so on federal habeas review of state trial proceedings. 983 F.2d at 1334-1335, 1341. Birdwell accordingly had no occasion to analyze the relationship between the IADA and the Speedy Trial Act, a consideration that several courts of appeals have found significant in interpreting the IADA's tolling provisions. Indeed, the Fifth Circuit did not acknowledge the then-recent decisions of the First, Second, and Ninth Circuits construing the timing provisions of the two statutes together in the context of federal prosecutions. See Johnson, 953 F.2d at 1172; Cephas, 937 F.2d at 819; United States v. Walker, 924 F.2d 1, 5-6 (1st Cir. 1991). Given that the Fifth Circuit has never applied its decision in Birdwell to a federal prosecution and that every federal court of appeals and state court of last resort to consider Birdwell's reading of Article VI(a) of the IADA has rejected it, see Collins, 90 F.3d at 1426-1427; State v. Pair, 5 A.3d 1090, 1100-1101 (Md. 2010), the Fifth Circuit may well be

open to distinguishing Birdwell in a future federal prosecution or to revising its prior articulation of the appropriate standard in light of the decisions of other appellate courts.

Similarly, Stroble does not suggest that the Sixth Circuit is firmly committed to the position petitioner advances. Stroble itself did not directly present the question whether a defendant's pretrial motions toll the clock under Article VI(a) of the IADA. Nor has petitioner identified any subsequent decision of or within the Sixth Circuit, in the more than 40 years since Stroble was decided, applying its passing discussion of Article VI(a), much less a decision applying that discussion to tolling based on the filing of pretrial motions in a federal prosecution.[5]

[5] For their part, the state courts of last resort to consider the question have agreed with the majority view of the federal courts. See, e.g., Commonwealth v. Montione, 720 A.2d 738, 741 (Pa. 1998), cert. denied, 526 U.S. 1098 (1999); Dillon v. State, 844 S.W.2d 139, 142 (Tenn. 1992), cert. denied, 507 U.S. 988 (1993). Contrary to petitioner's contention (Pet. 28), the Florida Supreme Court did not break from the state courts' consensus in Vining v. State, 637 So. 2d 921 (per curiam), cert. denied, 513 U.S. 1022 (1994). The court in Vining adopted the Second Circuit's longstanding rule that all "periods of delay occasioned by the defendant" are excluded from the IADA clock, id. at 925 (quoting United States v. Scheer, 729 F.2d 164, 168 (2d Cir. 1984)), and simply concluded that tolling was inappropriate on the facts of that case. Ibid. Petitioner's remaining citations (Pet. 27-28) are to decisions of intermediate appellate courts, which do not establish a conflict warranting review. See Sup. Ct. R. 10(b).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record

NICHOLAS L. MCQUAID
Acting Assistant Attorney General

CHRISTOPHER J. SMITH
Attorney

MAY 2021