No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2021

TRUMAN JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

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QUESTIONS PRESENTED

1. Whether the district court's refusal to accurately compute the extent of a Speedy Trial Act violation and to consider the government's district wide inattention to the Act or the possibility of non-trial prejudice to the defendant required a remand to evaluate whether dismissal with prejudice was appropriate in the context of an accurate and complete weighing of the statutory and non-statutory factors that have been identified by this Court.

2. Whether a delay of almost four years between the defendant's arrest and trial violated his Sixth Amendment right to a speedy trial.

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PETITION FOR A WRIT OF CERTIORI

Petitioner Truman Jones respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

DECISION BELOW

The opinion of the court of appeals (App. A) is not reported.

JURISDICTION

The Third Circuit entered an amended judgement, following a limited grant of a petition for hearing, on September 10, 2021. This Petition is being filed within 90 days after entry of the judgment below, so it is timely under Rule 13.1. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right . . . to a speedy . . . trial . . .

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3161:

(c) (1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within seventy days from the date of such consent.

*****

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

> (1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—…
>
> > (D) 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; …
> >
> > (H) 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.

*****

(6) 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.

(7) (A) Any 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 at the request of the attorney for 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. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

> (i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.
> (ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for

> pretrial proceedings or for the trial itself within the time limits established by this section…
>
> (iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

18 U.S.C. § 3162(a):

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

STATEMENT OF THE CASE

Following his arrest for drug and gun offenses in February 2016, Petitioner, Truman Jones, spent over three years in a county jail waiting for his trial to commence. First there was a delay of almost four months before an indictment was returned on May 17, 2016, and then it was not until May 20, 2019, that his trial was due to start. Included among the months and years that elapsed were hundreds of days of time that could not be excluded from the Speedy Trial Act calculation. The conservative and incomplete computation by the district court yielded results

ranging from 100 to 170 nonexcludable days, while the complete calculation revealed a violation of approximately 311 days. This finding resulted in a dismissal of the first indictment due to a violation of the Speedy Trial Act.

Mr. Jones maintained in the first instance that the indictment should have been dismissed with prejudice because, standing alone, the breach of the Act as calculated was substantial and inexcusable. He further maintained that the district court undercounted the number of days that were not excludable, and that the true number warranted a dismissal under the Act with prejudice or a remand to complete the calculation and conduct the proper analysis. Although the Third Circuit panel acknowledged that the district judge had in fact failed to calculate the extent of the violation, it declined to remand for a full calculation and a reassessment of whether dismissal with prejudice was appropriate in light of the extent of the violation and the failure of the court and the government to monitor the Speedy Trial clock. Mr. Jones also submits that the delay of almost four years between his arrest and trial violated his Sixth Amendment right to a speedy trail and that dismissal with prejudice was required.

This Petition follows.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because the Third Circuit's decision is at odds with controlling statutory authority and case law precedent, which requires a complete assessment of the extent of a Speedy Trial Act violation to be weighed along with other statutory factors in determining the remedy for a clear and extensive violation of the Act. The Third Circuit's decision is also at odds with controlling authority because it elevates the absence of demonstrable *trial prejudice* – a non-statutory factor – to a supreme position which overrides every other factor. In the Third Circuit's reading, an admitted undercounting of well over 100 days of non-excludable time, a failure to consider a pattern of government neglect, the failure to weigh the public's interest in enforcement of the Act or to even mention the non-trial prejudice to the defendant, all vanish because a drug and gun prosecution involves a serious crime. The petition should also be granted to provide the application of the so-called look through doctrine as applied to a fundamental constitutional right.

I. The Decision Below Is Wrong; Controlling Statutory Provisions and Supreme Court Precedent Established Unequivocal Guidance That Required a Remand to Determine the Extent of the Speedy Trial Violation and a Re-Weighing of all the Statutory and Non-Statutory Factors to Determine Whether Dismissal with Prejudice was Appropriate.

The Speedy Trial Act requires that the trial of a defendant charged in an Indictment "shall commence within seventy days from the filing date (and making public) of the…Indictment, or from the date the defendant appeared before a judicial officer of the court in which the charge is pending, whichever date last occurs." 18

U.S.C. § 3161(c)(1). Here, Mr. Jones was arrested pursuant to a criminal complaint on February 9, 2016, and the first Indictment was returned on May 17, 2016. Although Mr. Jones was arraigned on May 31, 2016, one co-defendant, Davon Beckford, was not arraigned until June 15, 2016, so the 70-day Speedy Trial clock began to run on June 16, 2016. *See e.g.*, *United States v. Van Smith,* 530 F.3d 967, 969-70 (D.C. Cir. 2008); *United States v. Novak,* 714 F 2d 810, 815 (3d Cir. 1983) (time excluded for one defendant applies to all).

Although the Speedy Trial Act requires trials to begin within 70 days, "the Act recognized that criminal cases vary widely and that there are valid reason for greater delay in particular cases. To provide the necessary flexibility, the Act includes a long and detailed list of periods of delay that are excluded in computing the time within which the trial must start." *Zedner v. United States,* 547 U.S. 480, 497 (2006). Among the periods of delay that are not counted are "delays resulting from any pretrial motion, from the date of the filing of the motion through the date of prompt disposition of the motion…" 18 U.S.C. § 3161(h)(1)(D)*; United States v. Arbelaez* 7 F.3d 344, 347 (3d Cir. 1993). The time allotted by the district court for the preparation and filing of pretrial motions is excludable as a delay resulting from other proceedings pursuant to 18 U.S.C. § 3161(h)(1). *Henderson v. United States*, 476 U.S. 321, 330 (1986) (all time between the filing of a motion and the conclusion of the hearing on that motion is excludable regardless of whether delay in holding a given the hearing is "reasonably necessary."). Also excludable from the computation of time are continuances in which the judge specifically determines at the time the

continuance is warranted due to case specific circumstances, "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). *Zedner*, 547 U.S. at 498-99. A defendant cannot prospectively waive the application of the Speedy Trial Act, in part because it protects not only the defendant's interest in a speedy trial, but also the interests of the public. *Id.* at 501-502.

Time after a hearing is also excludable where the district court awaits additional filings that are needed for proper disposition of a contested motion, as well as up to 30 days after the hearing for a decision. *Henderson v. Unites States*, 476 U.S. at 331; 18 U.S.C § 3161(h)(1)(F). Thus, when a motion requires a hearing, § 3161(h)(1)(F) stops the speedy trial clock from the date the motion is filed through the date the court holds a hearing on the motion. This subsection also excludes the time after a hearing that is needed to assemble all papers reasonably necessary to dispose of the motion, *e.g.*, the submission of post-hearing briefs. *Henderson*, 476 U.S. at 328-331). Once that occurs, the court is deemed to have taken the matter under advisement and has thirty days to decide the motion before the clock begins to run again. *United States v. Stephens*, 489 F.3d 647, 656-57 (5th Cir. 2007) (severance motion did not toll the clock for more than 30 days after last filing because no hearing was needed.) Notably, the district court cannot exclude time allowed for filing pretrial motions absent case specific "ends of justice" findings. *Bloate v. United States,* 559 U. S. 196, 214-15 (2010).

The statutory criteria a court must consider when choosing between the two dismissal remedies for a Speedy Trial Act violation are plain and simple:

> (a) the seriousness of the offense;
>
> (b) the facts and circumstances which led to the dismissal; and
>
> (c) the impact of re-prosecution on the administration of the Speedy Trial Act and on the administration of justice.

18 U.S.C. § 3162(a)(2). In addition to the statutory criteria, a court must also consider whether the defendant has suffered any prejudice – both trial and non-trial - due to the delay. *United States v. Taylor,* 487 U.S. 326, 340-41 (1988). The statute expresses no preference for dismissal with prejudice or without prejudice. *Id.*; *United States v. Moss*, 217 F.3d 426, 431-32 (6th Cir. 2000) (district court erred when it neglected to consider any non-trial prejudice suffered by the defendant including the impact of his incarceration on his life circumstances). It also cannot be disputed that a district court abuses its discretion when it bases its decision upon clearly erroneous finding of fact, erroneous conclusions of law, or improper application of law to the facts. *See Greene v. Superintendent Smithfield SCI*, 882 F.3d 443, 449 (3d Cir. 2018). Notwithstanding this clear and undeniable legal framework, the Third Circuit and the district court essentially ignored the criteria and elevated the absence of trial prejudice and deliberate government misconduct to a position that renders the Act all but superfluous.

Mr. Jones did not dispute that the drug and firearms charges were "serious" for purposes of the analysis but did take issue with the district court's incomplete calculation of the nonexcludable time, failure to consider the public's interest in the

administration of the Act, and pattern of government inattention to the Act. Mr. Jones also contested the finding, endorsed by the Third Circuit, that a serious offense, coupled with a lack of deliberate government misconduct, necessitates a finding that dismissal without prejudice is required, regardless of the extent of the violation. Opinion p. 5. Such a reading is at odds with the notion that the Act does not favor either result and, among other things, fails to account for the public interest in a speedy trial that is also protected by the Act. *See Bloate v. United States,* 559 U.S. 196, 211 (2010); *United States v. Bert,* 814 F.3d 70, 83 (2d Cir. 2016).

Also, by limiting the government responsibility analysis exclusively to a consideration of whether there is evidence of intentional misconduct by the government, the Act becomes a toothless speedy trial mechanism in the vast majority of cases, and any incentive for the government to monitor the application of the Act is removed. *See Zedner,* 547 U.S. at 499. Indeed, the reading of the Act relied upon by the Third Circuit provides the perverse incentive to the government to ignore the Act knowing that a violation would at worst provide an opportunity to reindict and start a new clock without any need to fear dismissal with prejudice. *See Bert*, 814 F.3d at 82-84. This, in a district where the recent litigation concerning enforcement of the Act would suggest that attention to detail has been something less than vigilant. *See United States v. Reese,* 917 F.3d 177 (3d Cir. 2019) (remand to determine whether dismissal with prejudice appropriate where district court continued trial date without interest of justice findings resulted in dismissal with prejudice due in part to the length of the violation. *See also United States v. Dean*,

17-CR-15 2021 MEM, 2021 WL 8599388 (M.D.PA. March 3, 2021), an assault case indicted in 2017 and dismissed without prejudice on March 3, 2021 due to a speedy trial violation, *United States v. Green*, 471 F.Supp.3d 577, 584-585 (M.D.PA. 2020), a firearms case dismissed for a second time without prejudice on July 9, 2020, *United States v. Williams*, 18-CR-153 RDM, 2021 WL 278306 (M.D.PA. January 27, 2021), a 2018 drug case dismissed without prejudice on January 27, 2021, *United States v. Golom*, 18-CR-123 ARC, 2019 WL 2084532 (M.D.PA. May 13, 2019), a sex trafficking case dismissed without prejudice on May 13, 2019, and *United States v. Curet*, 19-CR-98 SHR, 2020 WL 6290509 (M.D.PA. October 27, 2020) a Hobbs Act robbery case dismissed without prejudice on October 27, 2020.

The Third Circuit also turned on its head the notion that a defendant has no affirmative duty to insure he is tried in a timely manner by placing the blame for delay and passage of nonexcludable time on the Defendant's side of the ledger. Opinion at p.1. This is simply wrong. It is the responsibility of the court and government to manage the Speedy Trial clock, and that responsibility was woefully carried out in this instance. *See United States v. Williams,* 917 F.3d 195, 204-05 (3d Cir. 2019). *Bert*, 814 F.3d at 82-84 ("Once a motion has been taken under advisement the government cannot simply wash its hands of any further involvement and be assured of dismissal without prejudice . . . [and the failure of the government to act] is properly taken into account when evaluating the 'facts and circumstances of the case which led to the dismissal.'"); *Reese*, 917 F.3d at 181. ("[D]istrict courts . . . look to prosecutors for assistance as officers of the court . . . [and they should] be alert to

[speedy trial act] calculations in order to aid the court in its enforcement of the {speedy trial act].”). Notwithstanding the Third Circuit’s casual dismissal of the failure of the district court to complete the Speedy Trial Act calculation, one of the fundamental dismissal considerations is the length of the delay and the number of non-excludable days that elapsed. *See Taylor*, 487 U.S. at 340-41 (the length of the delay is a “measure of the seriousness of the Speedy Trial violation” and “[t]he longer the delay, the greater the presumption or actual prejudice to the defendant in terms of his ability to prepare for trial or the restraint on his liberty.”) In fact, in *Taylor* “the brevity of the delay and consequential lack of prejudice” to the defendant, whose failure to appear contributed to the delay of 14 non-excludable days, was one of the reasons the decision to dismiss with prejudice was reversed. *Id.* at 343. *Compare United States v. Hernandez*, 863 F.2d 239, 244 (2d Cir. 1988) (delay of 14 days, serious offense and no evidence of bad faith or pattern of neglect or prejudice warranted dismissal without prejudice) with *United States v. Stayton*, 719 F.3d 17, 21 (2d Cir. 1986) (dismissal with prejudice based on the “dominant” consideration of the “sheer length” of the 23 month delay was enough to tip the second factor in favor of dismissal with prejudice).

Notwithstanding the conclusions below, it is clear that the seriousness of the offense may be outweighed by the other factors, including a properly calculated lengthy delay. *Bert*, 814 F.3d at 79-80 (seriousness of the delay is not a standalone factor but is a component of the second factor and the prejudice assessment). In this case, despite several chances to do so, the district court simply never conducted a full

accounting of the length of the delay and number of non-excludable days, and the Third Circuit treated that fundamental error as an attendant nicety devoid of consequence. Perhaps had the extent of the violation that was calculated been shorter and the discrepancy occasioned by the refusal to count been a couple of days, that dismissive conclusion would have been justified.

But that was not the case that was before the Court. By definition, the court could not have properly balanced the competing factors that must be weighed. Indeed, the district court's "findings" varied from 100 days, to 125 days, to 170 days– and those "computations" failed to even consider the period after May 30, 2017. ("So, if I essentially include that in the calculation I get 125 days. 20, 30, 41 and 34. And I'm not even in your 2018 period.") Had the district court continued to count nonexcludable days it would have been forced to conclude that record also established that approximately 141 days in the period from December 13, 2018 to April 15, 2019 and April 17, 2019 to May 5, 2019 was not excludable (311 days total) for reasons similar to those which led this Court to find a Speedy Trial Act violation in *United States v. Reese*, 917 F.3d 177 (3d Cir. 2019). Although the error in *Reese* was arguably attributable in part to defense counsel, this Court concluded that fact did not absolve either the district court or the government of their responsibility under the Act.

The calculation deficiency was compounded by the explanation the district court offered when it announced its decision at the May 17, 2019 hearing:

> However, I also am prepared to say that it's going to be without prejudice, because if I look at the factors, the seriousness of the offense, no question about that, I don't think anybody is prepared to discuss that on the other side of it. I also -- with the facts and circumstances of how this came about,

> it's at best confusing because -- not only because of so many defendants, but there were things that you'd have to classify as emotion that may not have been, and -- it's just really not crisp and clean like it might be in a textbook. So, the facts and circumstances are somewhat muddy, which complicates matters and argues in favor of without prejudice. And lastly, in terms of how it impacts the Speedy Trial Act and the administration of justice, I think it speaks for itself given -- going back to the seriousness of the crime and what's at stake here, so that's my decision.

Aside from a reference to the number of defendants, which standing alone doesn't really explain anything specific to the case or the violation, the explanation failed to identify any relevant facts or specify how those facts were weighed. The district court did not even mention the government's role in and responsibility for the delay, including whether this was an isolated, discrete oversight or part of a more systemic problem. Worse, the district court seemed to say that regardless of the seriousness of the violation and any government responsibility for the delay, the seriousness of the offense "speaks for itself" and trumped all other considerations. And that is exactly the same rationale relied on by the Third Circuit when it denied Mr. Jones's appeal. Opinion at p 5.

The written Order that was entered following the hearing did not fill in the gaping holes in the district court's analysis. Although the Order made reference to counsel changes, "a confusing docket", lack of government misconduct, a "short delay of 100 days", and a lack of prejudice, it did not identify specific events or explain how those events contributed to the lack of attention to the Speedy Trial clock. There was no explanation for the assertion that "100 days" is a brief violation, much less where that number came from, no reference to whether government negligence contributed

to the violation, and no consideration of the non-trial prejudice suffered by Mr. Jones. In short, the record did not reflect the careful weighing of competing considerations required by the statute and precedent.

As indicated above, the record also established that approximately 141 days in the period from December 13, 2018 to April 15, 2019 and April 17, 2019 to May 5, 2019 was not excludable for reasons similar to those which led this Court to find a Speedy Trial Act violations in *Zedner,* 547 U.S. at 497 and *Henderson v. United States*, 476 U.S. 321, 330 (1986). *See also United States v. Reese*, 917 F.3d 177 (3d Cir. 2019). In this case, that period was ostensibly excluded from the Speedy Trial Act calculation by an order holding an uncomplicated severance motion in "abeyance" – a procedure that even on appeal the government did not attempt to defend. *See United States v. Bryant*, 523 F.3d 349, 359 (D.C. Cir. 2008) ("the District Court never held a hearing on the Rule 609 question, nor did it ever indicate that such a hearing might be required. Thus once . . . counsel failed to file a timely response . . . the Rule 609 filing was 'under advisement' by the District Court. This meant that the trial judge could toll the speedy trial clock only for an additional 30 days while deciding the motion.")

More to the point, during that period of delay, the government never articulated any concern about the Seedy Trial clock, never alerted the district court that a problem existed, and did not intervene to address the district court's post-motion hearing endless continuance order. *Zedner*, 547 U.S. at 498-99 ; *Taylor,* 476 U.S. at 331. *See also Reese*, 917 F.3d at 181 ; *Bert*, 814 F.3d at 83-84. In this context, it is

also important to keep in mind that the Act seeks not only to protect the interests of the defendant but also to address the interest of society in a speedy trial, a topic also ignored by the district court. *Id.* The government and the court are obligated to protect the public's interest through vigilant enforcement of the Act. *See Bloate*, 559 U.S. at 211.

The district court also concluded, and the Third Circuit accepted, that because there was no evidence of bad faith by the United States, dismissal without prejudice was the appropriate remedy. This Court explicitly rejected that proposition; the absence of proof of bad faith is merely one facet of the analysis of the second and third factors. *Zedner*, 547 U.S. at 499 ("If the government may only suffer dismissal without prejudice on motion of the defendant it in effect gains successive 70-day periods in which to bring the defendant to trial.") The rule espoused by the district court and accepted by the Third Circuit would reduce enforcement of the Act and undermine its goal of assuring that systems were in place to secure compliance because defendants would have little incentive to seek enforcement if they knew the result would always be a symbolic success. The lack of bad intent, therefore, is not determinative of the weight to be assigned to either the facts and circumstances or impact on the administration of justice.

In short, the record reveals a lack of rigor and attention to the process this Court and the Speedy Trial Act require when determining the extent, cause, responsibility, and appropriate remedy for a violation of the Act. The petition should be granted to ensure uniform enforcement of the Act and to assign the appropriate

weight to be given to the various factors, including the non-trial prejudice suffered by a detained defendant.

II. The Sixth Amendment Right to a Speedy Trial Analysis Must Include a Proper Consideration of the Presumptive Prejudice Occasioned by a Prolonged Delay in Pretrial Detention and a Fair Apportionment of the Cause of the Delay.

In addition to moving to dismiss the Indictments pursuant to the Speedy Trial Act, Mr. Jones also moved to dismiss the second Indictment for a violation of his Sixth Amendment right to a speedy trial. (DE2 27; App. 248-258). The district court denied those motions after balancing the factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530-32 (1972) and the Third Circuit affirmed that decision.

When confronted with a motion to dismiss for a violation of a defendant's Sixth Amendment right to a speedy trial, a court must consider the following four factors: "(1) the length of the delay before trial; (2) the reason for the delay and specifically whether the government or the defendant is the one to blame; (3) the extent to which the defendant asserted his speedy trial right; and (4) the prejudice suffered by the defendant." *Barker v. Wingo*, 407 U.S. at 530-32. In finding that a dismissal was not required in Mr. Jones's case, the district court understated the length of the delay, failed to apply the presumption of prejudice due to the length of the delay, misallocated responsibility for the delay, and failed to consider the prejudice inherent to the delay for a person held without bail. Although the Third Circuit noted that the presumption of prejudice applied, it did not accord that factor appropriate weight in determining whether dismissal was appropriate.

The length of the delay is measured from the date the defendant's arrest-February 9, 2016, not the date he was not first indicted-May 30, 2016. *See United States v. Battis,* 589 F.3d 673, 678-79 (3d Cir. 2009). So, at the time the defendant first moved to dismiss the Indictment, the delay was 38 months, and by the time his renewed motion to dismiss the second indictment was denied in December 2019, approximately 46 months had elapsed. In either case, it was certainly long enough to qualify as presumptively prejudicial, a fact the Third Circuit could not avoid. *See, e.g.*, *United States v. Claxton*, 766 F.3d 280, 294 (3d Cir. 2014) (14-month delay presumptively prejudicial requiring inquiry into remaining *Barker* factors.) Opinion at. p 6.

Although the evidence of trial prejudice was admittedly thin, the non-trial prejudice included but almost four years of pretrial detention in a county jail. The length of time and nature of the confinement have been recognized as relevant factors in assessing whether a Sixth Amendment violation has occurred. *See, e.g.*, *Doggett v. United States*, 505 U.S. 647, 655-56 (1992).

Also, because the district court miscalculated the amount of time that had elapsed under the Speedy Trial clock, it mistakenly concluded that Mr. Jones was responsible for or complicit in much of the delay. In fact, much of the delay was attributable to government requests for continuances, co-defendant delays and long periods of non-excludable delays. The Third Circuit similarly failed to properly consider the government's role in the delay, including requests for continuances to

respond to pretrial motions. Instead, defense counsel courtesy was leveraged against Mr. Jones. Opinion at p. 5-6.

Under a proper understanding of the record, Mr. Jones respectfully submitsthat the length of the delay, together with the mixed record of responsibility for the delay, and the excessive lapse of Speedy Trial Act time, weighed heavily in favor of dismissal. Also weighing in favor of dismissal is the fact that Mr. Jones was detained in a county jail with limited legal resources for the entire time. Detention in those circumstances carries a type of prejudice that is both real and relevant despite the fact that it is difficult to quantify. *See Doggett*, 505 U.S. at 655-57; *United States v. Velazquez,* 749 F.3d 161, 175 (3d Cir. 2014) ("Negligence over a sufficiently long period of time can establish a general presumption that the defendant's ability to present a defense is impaired, meaning that a defendant can prevail on his claim despite not having shown specific prejudice.").

The district court erred when it miscalculated the amount of time that had elapsed due to government negligence or reasons not attributable to the defendant. Although the Third Circuit nominally corrected the district court's error when it failed to consider the prejudice inherent to a prolonged period of pretrial detention in a county jail with minimal resources, it declined to afford significant weight to such a long delay in what was a simple, low-level drug conspiracy prosecution. The Third Circuit improperly concluded that delays that occurred due to late discovery, dilatory briefing, and prolonged plea negotiations were Mr. Jones's fault because he did not raise an objection from a county jail where he access to limited to resources that would

allow him to even know he had such a right. Mr. Jones, therefore, maintained that his consistent readiness to stand trial fulfilled his limited responsibility to assert his speedy trial right in the face of the government's overarching burden to prove waiver of that fundamental right. *See United States v. Velazquez,* 749 F.3d 161, 182 (3d Cir. 2014). Regardless of whether the assertion of his right factor weighs in his favor, Mr. Jones respectfully submits that the other three factors – length of delay, prejudice and fault – all should have weighed in his favor and supported a dismissal of the Indictment. Mr. Jones further submits that the petition should be granted to resolve confusion regarding the weight to be given to the length of a delay, the presumed prejudice, and the inherent prejudice of a lengthy delay while detained in a county jail for nearly four years.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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