21A384

NO.: (21-6960)

IN THE
SUPREME COURT OF THE UNITED STATES

Jonathan C. Roush,

Petitioner,

vs.

United States of America,

Respondent,

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

EMERGENCY APPLICATION TO JUSTICE KAVANAUGH FOR RELEASE FROM CUSTODY PURSUANT TO 18 U.S.C. § 3164(c)

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Table Of Contents

Attachments

Table of Authorities

EMERGENCY APPLICATION FOR RELEASE

Now comes Petitioner, Jonathan C. Roush, pro se, to request release from custody pending trial. Mr. Roush is currently being detained in violation of 18 U.S.C. § 3164 as he has been continuously detained solely awaiting trial in excess of the 90 day limit set by § 3164. The district court erroneously denied Mr. Roush's motion for release on those grounds and the Court of Appeals for the Sixth Circuit committed error by affirming the decision of the district court. Mr. Roush now applies to the Honorable Justice Brett Kavanaugh for release pending trial. Mr. Roush has been detained in violation of § 3164 since his motion for release in June, over six months. Further detention in violation of § 3164 clearly constitutes irreparable harm to Mr. Roush. Petitioner prays that Justice Kavanaugh will right this wrong and order Mr. Roush's pretrial release.

JURISDICTIONAL STATEMENT:

Rule 22.1 of the Supreme Court provides that an application may be made to an individual Justice by filing said application with the Clerk. Furthermore, pursuant to Rule 22.3 the application shall be addressed to the Justice alloted to the circuit from which the case arises.

The Justice alloted to the Sixth Circuit is the Honorable Justice Brett Kavanaugh to whom the instant application is addressed.

I. STATUTORY PROVISION – 18 U.S.C. § 3164

18 U.S.C. § 3164 provides that trial for a person who is detained solely because

they are awaiting trial must commence within 90 days of the beginning of such continuous detention. § 3164(a)&(b). Failure to commence trial within the 90 day limit results in release of the detainee pending trial. § 3164(c). In calculating the 90 day period, the periods of time in § 3161(h) are excluded.

II. STATEMENT OF THE CASE

A. Procedural History

Petitioner, Jonathan C. Roush, was indicted on October 9, 2020. The case was assigned to Senior U.S. District Judge Christopher A. Boyko. Mr. Roush was transferred into the custody of the U.S. Marshals Service on October 26, 2020[1]. His initial appearance before a U.S. Magistrate occurred on October 30, 2020 and a detention hearing was scheduled for November 6, 2020. At the conclusion of the detention hearing, Mr. Roush was ordered detained pending trial.

From November 7, 2020 to January 10, 2021, the docket was silent. On January 11, 2021, Judge Boyko entered a Non-Document Ends-of-Justice Continuance. This continuance was ordered pursuant to the district's Amended General Order 2020-08-4, which suspended jury trials in the district until on or after February 16, 2021.

No further activity appeared on the docket until February 19, 2021. On that date, Judge Boyko again entered a Non-Document Ends-of-Justice Continuance. This continuance was ordered pursuant to Amended General Order 2020-08-5, which suspended jury trials until on or after April 5, 2021. The docket fell silent once more.

1 Petitioner was completing a 9 month parole violation sanction with a release date of November 8, 2020.

On May 13, 2021, an email was sent to the parties by Deputy Clerk Heather Sherer. This email stated that defense counsel confirmed that the defendant wished to proceed to trial. The email further stated that Judge Boyko had trials scheduled non-stop through October and that November 1, 2021 was the earliest available date. The clerk also asked the parties for an estimate of the trial length as trials lasting longer than 5 days would be postponed.

On May 18, 2021, a Criminal Trial Order was entered into the docket. This order was a boilerplate form which is used in every case assigned to Judge Boyko. It outlines trial preparation requirements, pretrial deadlines, pretrial conference dates and the trial date. The May 18 order set trial for November 1, 2021. It contained no statement purporting to exclude time until the trial date, nor did it invoke the 18 U.S.C. § 3161(h)(7)(A) ends-of-justice provision.

On June 23, 2021, Mr. Roush filed two motions. The first was a Motion to Proceed Without Counsel. (R. 13, Motion). The second was an Emergency Motion for Immediate Release Pursuant to 18 U.S.C. 3164(c). (R. 14, Motion). The government replied in opposition (R. 15, Response) to the motion for release on June 30, 2021, and Mr. Roush replied (R. 16, Rebuttal) on July 13, 2021. In his motion, Roush alleged that more than 90 unexcluded days had accrued in violation of § 3164.

On August 4, 2021, Judge Boyko held a hearing to address Mr. Roush's motion to proceed without counsel. After the necessary inquiry, Judge Boyko granted the motion. Immediately upon granting Mr. Roush *pro se* status, Judge Boyko order the case be transferred to a different judge. The same day, the case was transferred to U.S. District

Judge John R. Adams.

B. September 1, 2021 Status Conference[2]

On August 9, 2021, a Status Conference was Noticed, (R. 20, Notice), for September 1, 2021. On that date, Judge Adams held the status conference. During the conference the November 1, 2021 trial date was kept and the court discussed with the parties final pretrial dates and jury matters, etc. Upon being through with the court's agenda, Judge Adams asked the Government if there were any further matters to be addressed. The Government then brought up Mr. Roush's pending release motion. The court asked Mr. Roush if he wished to be heard further. Mr. Roush requested that the court issue a ruling on the motion. The following exchange took place:

(R. 37, Transcript, PageID#: 203, 17-21)

THE COURT: You've had a detention hearing, I take it?

THE DEFENDANT: Yes, I did, Your Honor.

THE COURT: All right. So you don't get two bites of the apple. The motion is denied.

Judge Adams briefly explained that after a detention hearing and order, the court was not required to consider another motion for bond. He further stated "We don't need to write on it. It's clear." (R. 37, Transcript, PageID#: 204, 1-2).

As it was clear that Judge Adams believed Mr. Roush was requesting release under the Bail Reform Act, rather than section 3164 of the Speedy Trial Act, Mr. Roush raised the issue with the court (R. 37, Transcript, PageID#: 205, 10-23). Upon being informed that there was an alleged speedy trial violation, Judge Adams responded that,

2 R. 37, Transcript is included as Attachment C

"The chief judge has issued two or three general orders that would make your motion not well-taken as it relates to speedy trial. So candidly, I'm not overly concerned about it at all..." (Transcript, PageID#: 206, 1-4). The court repeated this sentiment, stating, "So as I've indicated, I'm not overly concerned about it because of the Court's general orders. You'll remain detained. Thank you very much. That will be the Court's order." (Transcript, PageID#: 206, 10-13).

On September 8, 2021, a Marginal Entry Order[3] (R. 22, Order) was entered into the docket. The order was a copy of the defendant's original motion for release with a small notation superimposed stating that the motion was denied, "for reasons set forth on the record during the status conference held on 9/1/21."

C. Interlocutory Appeal

On September 14, 2021, Mr. Roush filed a timely Notice of Appeal (R. 27, Notice) of the order denying his motion for release. Mr. Roush then filed his opening brief (App. Doc. 7) on September 16, 2021. On September 17, 2021, the district court then entered a post-appeal order, (R. 32, Order), purporting to detail the calculations and findings relied upon by the district court in denying Mr. Roush's release motion.

Mr. Roush filed a motion (App. Doc. 18) on September 24, 2021 with the Court of Appeals to exclude the order from consideration as an impermissible post-appeal supplemental order which contained findings, analysis and calculations not relied upon when ruling on the motion on Sept. 1. He argued that the court was barred from providing supplemental findings and analysis by the Supreme Court ruling in *Zedner v.*

3 R. 22, Marginal Entry Order is included as Attachment D

United States, 547 U.S. 489, 509, 126 S. Ct. 1976, 164 L. Ed. 2d 749 (2006) and *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 74 L. Ed. 2D 225 (1982). He further argued that the Sept. 17 order included an impermissible retroactive continuance purporting to exclude the time from December 7, 2020 until the date of the order.

Mr. Roush subsequently withdrew his opening brief and filed an amended brief(App. Doc. 26), on October 8, 2021, to further address the district courts' impermissible post-appeal order. The Governments filed it's brief (App. Doc. 29) on October 19, 2021 and Mr. Roush filed his reply (App. Doc. 34) on November 1, 2021.

On December 7, 2021, the panel assigned to Mr. Roush's appeal affirmed the district court's denial, stating the district court's "albeit brief" explanation at the September 1, 2021 status conference was sufficient and expressly included the reasoning set forth in the district court's Sept. 17, 2021 post-appeal order.

III. GOVERNMENT'S CALCULATION

In its appellee brief, the Government provided the following speedy trial calculation:

Time Period	Countable Days	Event(s)	Total Speedy Trial Act Days
11/8/20 – 1/10/21	64	Roush remains in federal custody, solely because he is awaiting trial, after his state sentence terminates	64
1/11/21 – 5/2/21	0	1/11/21 and 2/19/21 non-document ends-of-justice continuances based on suspension of jury trials	64
5/3/21 – 5/17/21	15	Jury trials resume	79

While disagreeing with the assertion that four days ran on Mr. Roush's clock from October 26, 2020 to October 29, 2020, the Government agrees that following the detention hearing, Mr. Roush's speedy trial clock ran until the first non-document ends-of-justice continuance was ordered in his case on January 11, 2021. Mr. Roush initially argued that the February 19, 2021 continuance excluded time until April 4, 2021, as it cited Amended General Order 2020-08-5, which allowed jury trials to begin on April 5, 2021. The Government argues that as the general order was superseded by 2020-08-6 & 2020-08-7, which collectively suspended jury trials until May 3, 2021, the Feb 19 continuance excluded time until May 2, 2021. Regardless of whether the continuance excluded time until April 4 or May 2, the parties agree that at the very least, 79 unexcluded days accrued as of May 17, 2021.

In his petition, Mr. Roush asserts that if one were to accept the government's argument that the February 19, 2021 continuance were effective to exclude time until May 2, 2021, as opposed to the April 4, 2021 date provided for the resumption of trials by Amended General Order 2020-08-5 (relied upon by the Feb 19 continuance), this would mean the Feb 19 continuance was open-ended. The circuits are clearly split as to whether the Speedy Trial Act allows such continuances. The 2nd and 9th Circuits[4] have ruled that continuances under 3161(h)(7) must be specifically limited in time and do not allow for open-ended indefinite continuances.

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4 *United States v. LoFranco*, 818 F.2d 276 (2nd Cir. 1987); *United States v. Gambino*, 59 F.3d 353 (2nd Cir. 1995); *United States v. Pollock*, 726 F.2d 1456, 1461 (9th Cir. 1984); *United States v. Clymer*, 25 F.3d 824, 828-29 (9th Cir. 1994)

The 1st, 3rd, 5th, 6th, 10th, and 11th Circuits[5] have permitted the use but have adopted a reasonableness standard in determining if the continuance is effective to exclude time. This seems to conflict with this Court's opinion in *Zedner*, which determined that 3161(h)(7), "gives the district court discretion -- within limits and subject to specific procedures -- to accommodate **limited delays** for case-specific needs" *Id.* at 498. Courts have also expressed disapproval of open-ended continuances as they are comparable to a "waiver" disallowed by Zedner such as in *United States v. Graham*, 2008 U.S. Dist. LEXIS 122113 (S.D. Ohio 2008):

> "Finally, although decided on different facts, it seems obvious from the *Zedner* decision that granting an open-ended continuance is not appropriate under the Speedy Trial Act. In *Zedner*, the Court held that a defendant may not prospectively waive his Speedy Trial rights for "all time." 547 U.S. at 503. An open-ended continuance is similar to an "all time" waiver in that it leaves the trial court and the parties to their own devices as to when and whether the case is to be brought to trial. Moreover, the ends of justice are never be served by delaying a trial indefinitely." Id. at LEXIS 13.

An unmistakable concern is the danger such a continuance poses to the detained defendant. A case allowed to be continued indefinitely would effectively render the limit imposed by 3164 meaningless. Furthermore, it would be assumed that a district court, rather than indefinitely continuing a case, would seek to impose time limits and

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5 *United States v. Rush*, 738 F.2d 497, 508 (1st Cir. 1984); *United States v. Lattany*, 982 F.2d 866, 868 (3rd Cir. 1992); *United States v. Jones*, 56 F,3d 581, 586 (5th Cir. 1995); *United States v. Sabino*, 274 F.3d 1053 (6th Cir. 2001); *United States v. Spring*, 80 F.3d 1450, 1457-58 (10th Cir. 1996); *United States v. Twitty*, 107 F.3d 1482, 1489 (11th Cir. 1997)

deadlines. Deadlines and dates can always be rescheduled. Time lost due to inattentiveness can never be regained.

This issue warrants the attention of this Court in order to clarify as to the validity of open-ended exclusions of time and if allowed, under what standard such a continuance must be measured.

IV. CRIMINAL TRIAL ORDER

The decisive argument which leads to the necessity of Mr. Roush's release is the time period beginning May 18, 2021. The Government argued that the Criminal Trial Order (R. 12, Order) entered on May 18, 2021, setting trial for November 1, 2021, is a continuance resulting in excludable time. A review of the record reveals otherwise.

The Criminal Trial Order is a boilerplate order used in every criminal case assigned to Judge Boyko. It states the day of final pretrial, trial and filing deadlines, and requirements for trial preparation. The order does not contain any statement that the time between the order and trial date is excludable, nor does it provide any findings which would support such an exclusion as required by 18 U.S.C. § 3161(h)(7)(A).

The Government points to an email[6] sent by Judge Boyko's deputy clerk, Ms. Heather Sherer. This email was sent on May 13, 2021 and stated that the dates listed were the earliest dates available in Judge Boyko's calendar. This was due to trials being scheduled non-stop through the middle of October. The Government argued that the order provided excludable time as it referenced a 5 day limitation on trial length. This

6 A copy of the email is included as Attachment B.

requirement was listed in Amended General Order 2020-08-7, which allowed trials to begin May 3, 2021. The Government does not explain the inconsistency of it's arguments that 2020-08-7 allowed Mr. Roush's speedy trial clock to begin running on May 3, but required it to stop on May 18. The email shows that the November 1, 2021 trial date was the first available due to congestion of the court's calendar. Court congestion is an impermissible factor for a court to order an ends-of-justice exclusion[7]. § 3161(h)(7)(C).

Regardless of the length of Mr. Roush's trial, which the parties agreed would last less than 5 days, the soonest it would be able to be scheduled for was Nov. 1. This shows that Amended General Order 2020-08-7, which allowed Mr. Roush's clock to resume on May 3, 2021, was not the reason for the Nov. 1 trial date.

Once included into the calculations agreed to by the parties, the following total results:

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7 *United States v. Crane*, 776 F.2d 600 (6th Cir. 1985)(Continuance is not excludable period of delay where, although defendant's counsel is not prepared for trial, trial judge's unavailability is caused at least partially by his presiding over another case and is therefore attributable to general congestion of court's calendar); *United States v. Ramirez*, 788 F.3d 732 (7th Cir. 2015)(Dismissal of indictment was required under Speedy Trial Act because delay was at least 178 days; transcript strongly suggested that district court's decision to continue case six months was based on its crowded calendar, which was factor wholly impermissible for consideration in support of ends of justice continuance.); *United States v. Smith*, 588 F. Supp. 1403 (D. Haw. 1984)(General congestion of court's calendar cannot provide basis for delay beyond limits of Speedy Trial Act (18 USCS § 3161); if no judge is available and violation of 70-day limit is inevitable, government should move to suspend requirement under 18 USCS § 3174(e).); *United States v. Benjamin*, 623 F. Supp. 1204 (D.D.C. 1985)(Speedy Trial Act assumes that federal district court would rearrange its docket to accommodate significant case, even if other matters are delayed.) *United States v. Nance*, 666 F.2d 353 (9th Cir.), cert. denied, 456 U.S. 918, 102 S. Ct. 1776, 72 L. Ed. 2D 179 (1982)(Attempt to exclude time period on grounds that 3 custody cases were set for trial before court during such period is excuse that constitutes "general congestion" of court's calendar which, under 18 USCS § 3161 is impermissible factor upon which to base ends of justice continuance where such cases were not scheduled to take advantage of resources left idle by defense counsel's requested continuance and where matters were scheduled in advance and trial judge, anticipating scheduling conflict, should have sought earlier compliance with §§ 3161 et seq.)

Time Period	Countable Days	Event(s)	Total Speedy Trial Act Days
11/8/20 – 1/10/21	64	Roush remains in federal custody, solely because he is awaiting trial, after his state sentence terminates	64
1/11/21 – 5/2/21	0	1/11/21 and 2/19/21 non-document ends-of-justice continuances based on suspension of jury trials	64
5/3/21 – 5/17/21	15	Jury trials resume	79
5/18/21 – 6/22/21	36	No tolling event, pending motion, etc.	115
6/23/21	0	Motion to Proceed Pro Se & Motion for Release Entered	115

V. DISTRICT COURT DENIAL

It is undisputed that the district court denied Mr. Roush's motion on September 1, 2021. This is confirmed by the Court of Appeals in it's opinion dated December 7, 2021. The district court's reason, as stated on the record and confirmed on September 8, 2021, was the "two or three general orders" issued by the chief judge would make the motion "not well-taken as it relates to speedy trial." The district court chose not to elaborate, expressing the generalized belief that any speedy trial claim made by the defendant would be precluded by the general orders. At no time did the district court explain what time periods were excluded in the case, nor did the district court offer any analysis or calculations as to the total unexcluded or excluded days applying to the case. The district court did not offer any case specific analysis, and did not provide any findings as to the needs of the case for any exclusions. Indeed, the district court did not acknowledge or discuss the existence of either of the two continuances ordered in the case which were

made pursuant to the general orders. Notably, the district court also did not mention the May 18, 2021 criminal trial order, nor did it provide any findings which would make the time period between the trial order and the November 1, 2021 trial date excludable.

The district court's oral denial is clearly inadequate. In *Zedner v. United States*, 547 U.S. 489, 507, 126 S. Ct. 1976, 164 L. Ed. 2d 749 (2006), the Supreme Court ruled that the district court's "passing reference" to the case's complexity did not satisfy the Act to effectively exclude time under the ends-of-justice provision. Furthermore, this Court ruled that in order for a district court to satisfy the Act's requirement that findings must be placed on the record of the case, the findings must be entered by the time it rules on the defendant's motion, *Id.* at 507. In the instant case, the district court did not place any express findings on the record. Other than the passing reference to the district's general orders, the transcripts of the hearing are clear that no case-specific application was discussed. The district court even emphasized that he wasn't "overly concerned about it at all". (R. 37, Transcript, PageID#: 206), further removing any legitimacy to the district court and court of appeals claims of valid exclusion.

Upon Mr. Roush's Notice of Appeal, the district court issued a new order on September 17, 2021. The order is purported to be necessary to explain the district court's reason for the Sept. 1 denial. In the order, the district court discussed a detailed description of the general orders issued by the chief judge. The district court then orders an ends-of-justice exclusion of all of the time between December 7, 2020 until the date of the order.

In his petition, Mr. Roush argues that the Sept. 17, 2021 order contains an

impermissible retroactive continuance. These continuances have been prohibited by the 2nd, 3rd, 4th, 7th, 10th, and 11th circuits[8]. The 8th circuit[9] has ruled in general agreement, allowing only the correction of clerical errors. The 9th circuit[10] has expressed general agreement without expressly ruling on the issue. While the 1st and 5th circuits[11] have yet to approach the issue, district court's within those circuits have expressed agreement with the prohibition. The 6th circuit[12] has also expressed disapproval of retroactive findings and exclusions, but the decision by the Court of Appeals in the instant case expressly allowed the retroactive continuance ordered in the district court's September 17, 2021 post-appeal order. (Panel Opinion, Attachment A, Page 3)

In its Sept 17 order, the district court also discusses a continuance requested by the defendant. While not mentioned by the district court, the continuance was not requested until September 10, 2021 (R. 24, Motion). Petitioner is bewildered as to how the district court could have included the request as a reason for it's denial, which occurred 9 days prior to the request for continuance. Furthermore, the violation alleged was completed months before and the requested continuance has no effect on a prior violation.

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8 *United States v. Kelly*, 45 F.3d 45, 47 (2d Cir. *1995); United States v.* Brenna, 878 F.2d 117, 122 (3rd Cir. *1989); United States v.* Keith, 42 F.3d 234, 237-238 (4th Cir. *1994); United States v.* Janik, 723 F.2d 537, 545 (7th Cir. *1983); United States v.* Williams, 511 F.3d 1044, 1056 (10th Cir. *2007); United States v.* Elkins, 795 F.2d 919, 922, 924 (11th Cir. 1986)

9 *United States v. Suarez*-Perez, 484 F.3d 537, 541-542 (8th Cir. 2007)

10 *United States v. Frey*, 735 F.2d 350, 352 (9th Cir. 1984)

11 *United States v. Kifwa*, 2020 U.S. Dist. LEXIS 185141 (D. Maine 2020), at LEXIS 10-13; *United States v. Shanahan*, 2007 U.S. Dist. LEXIS 61124 (D. N.H. 2007) at LEXIS 11-13; *United States v. Gottesfeld*, 319 F. Supp. 3d 548, 559 (D. Mass. 2018); *United States v. Renteria Rodriguez*, 824 F. Supp. 657, 661 (W.D. Texas 1993)

12 *United States v. Richmond*, 735 F.2d 208, 216 (6th Cir. 1984)

VI. RESULT WARRANTS RELEASE

Upon review of the procedural history and specific facts of the case, one must conclude that a violation of § 3164 occurred. The docket entries in the case show clear periods of unexcluded time, with continuances conspicuously entered on January 11, 2021 and February 19, 2021. The parties agree that the continuances are valid, but disagree as to the end date of the February 19 continuance. Regardless, the record support the parties agreement of the minimum 79 unexcluded days as of May 17, 2021, and the record also reflects as to the lack of findings perfecting exclusion for the May 18 to June 22, 2021 time period. This results in 115 unexcluded days.

The district court's oral denial was clearly erroneous and the brief passing reference to the district's general orders are inadequate. Furthermore, the Sept 17, 2021 order was clearly an impermissible post-appeal order setting forth post hoc rationalizations for the oral denial, in direct contradiction of this Court's rulings in *Griggs* and *Zedner*. Upon removal of the order from consideration, the conclusion is straightforward. The record reflects a clear violation, and the sanction available is release of the defendant pending trial, for however brief a period it may be.

VII. IRREPARABLE HARM:

"Deprivation of physical liberty by detention constitutes irreparable harm."
Arevalo v. Hennessy, 882 F.3d 763, 767 (9th Cir. 2018)

It is undeniable that detention in violation of § 3164 constitutes irreparable harm.

"The loss of First Amendment freedoms, for even minimal periods of time,

unquestionably constitutes irreparable injury." *Roman Catholic Diocese v. Cuomo*, 592 US ___, 141 S Ct ___, 208 L Ed 2d 206 (2020)(quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976) (plurality opinion)) Surely the deprivation of an individuals' right to liberty and due process under the Fifth and Fourteenth Amendments would equate to the same or greater degree of irreparable injury. Each day an individual spends detained pending trial results in degradation of personal relationships, loss of income and pursuit of employment, anxiety, restriction of enjoyment of freedom of choice, and the pursuit of happiness.

Furthermore, when statute provides a remedy for prolonged pretrial detention, denial of that remedy on erroneous grounds amounts to a deprivation of the defendant's right to due process. When a defendant has alleged a violation of the 90 day limit imposed by 18 U.S.C. § 3164, and the motion setting forth the allegation is denied without consideration of the merits, and without the necessary analysis and calculation, due process demands additional remedy. Denial of proper remedy would undeniably result in irreparable harm.

Mr. Roush first alleged violation of § 3164 on June 23, 2021. The district court, without considering the merits of the motion, indeed, without even reading the motion, denied it. Even upon learning the true grounds for the motion, the district court declined to perform the requisite analysis or calculations imperative to effectively rule on the motion. The district court opined that it was not "overly concerned" with the issue. It is apparent that the district court only became "overly concerned" upon the defendant's filing of a notice of appeal. The district court then belatedly attempted to remedy it's

error by ordering retroactive exclusion of sufficient time to justify it's earlier denial.

On appeal to the Sixth Circuit, this incorrect procedure was expressly approved by the Court of Appeals. Due to the denial of Mr. Roush's motion for release, as of December 7, 2021, he has now been detained in violation of 18 U.S.C. § 3164 for over 408 days. This is four and a half times the 90 day limit.

Speaking in opposition to an amendment that would have reduced the 90-day limit of section 3164(b) to 60 days, Senator Thurmond told the Senate that "the 90 days is the worst case limit," 130 Cong. Rec. S941 (daily ed. Feb. 3, 1984), Senator Laxalt called the 90-day limit the "upper bound," id. at S943, and Senator Grassley relied on the 90-day limit to assure his colleagues that "no defendant will be detained indefinitely while the processes of justice grind to a halt," id. at S945.

Mr. Roush has thus been experiencing irreparable harm for the over 160 days he has remained in detention after requesting release. This harm has been caused by the erroneous procedure perpetrated by the district court and upheld by the court of appeals.

VIII. LIKELIHOOD OF SUCCESS:

Petitioner has undoubtedly established that he is likely to succeed in his Petition for Certiorari. The presence of multiple issues which are the result of a split between the circuits merits the attention of the Supreme Court. Furthermore, the obvious deviation from precedent and acceptable practice and procedure by the district court and court of appeals necessitates that the Supreme Court exercise it's supervisory power to correct this obvious error. However, it is unlikely that the merits will be analyzed and decided by

this Court before Petitioner's trial. As the ultimate result will be pretrial release of Petitioner, a decision reached far in the future would render the decision moot as to the relief requested.

IX: PLEA FOR RELEASE:

As stated above, it is unlikely that this Court will decide upon the merits of Mr. Roush's petition in time for petitioner to secure the relief requested, pretrial release. The Supreme Court's enormous caseload may prevent Mr. Roush's petition from being heard for some time. For the foregoing reasons, Mr. Roush has demonstrated a clear violation of the 90 day requirement for trial of detainees as provided in 18 U.S.C. § 3164, that failure to order Mr. Roush's pretrial release results in ongoing irreparable harm, and that he is likely to succeed on Petition for Writ of Certiorari. Therefore, Mr. Roush respectfully requests that Honorable Justice Kavanaugh order he be released pending trial.

DATED this 6th day of JANUARY, 2022.

Respectfully Submitted,

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