APPENDIX (In Consecutive Order)

TABLE OF AUTHORITIES CITED

CASES

JURISDICTIONAL STATEMENT

This Court has Original Judicial Power and Jurisdiction of to issue this Great Writ under Article III of the Constitution of the United States.

Under Supreme Court Rule 17 Original Article III Jurisdiction will be extended to Extraordinary Writs by way of Rule 20.

CITATION OF LOWER COURT DECISIONS

The decisions of the Untied States District Court for the District of Oregon, Portland Division are set out in the written orders attached to this petition, Appendix E.

The Decisions of the United States Court of Appeals for the Ninth Circuit are set out in the written orders attached to this petition Appendix H, I.

CONTROLLING PROVISIONS, STATUTES, RULES

THE LAW
(Caselaw in support of Facts and Merits of the Case)

I. A Court's Jurisdiction Is Limited To Cases Or Controversies

Article III, §1

"The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time Ordain and Establish."

Article III, §2

"The Judicial Power shall extend to all Cases... Controversies." See also In re Sisk, 962 F.3d 133 (9th Cir. 2020); Lujan v. Defs. of Wildlife, 119 L.Ed. 2d 351 (8th Cir., 1992)

II. Standing Determines A Court's Jurisdiction

United States v. Hayes, 515 U.S. 737 (1995)

"Standing is perhaps the most important of the Jurisdictional doctrines." See also Ellis v. Costco WHolesale Corp., 657 F.3d 970 (9th Cir., 2011); Hollingsworth v. Perry, 186 L.Ed. 2d 768 (2013)

III. The Courts Have A Duty To Determine Standing Exists

Wildearth Guardians v. United States E.P.A.,
759 F.3d 1064 (9th Cir., 2014)

"Standing is not subject to waiver, and a court has an independent obligation to assure that Standing exists, regardless of whether it is challenged by any of the parties." See also Armstrong v. Davis, 275 F.3d 849 (9th Cir., 2001); Ruhrgas AG v. Marathon Oil Co., 143 L.Ed. 2d 760 (1999)

---- This Also Applies To Circuit Courts----

Steel Co., 523 U.S. 83 (7th Cir., 1998)

"Circuit Courts must establish Jurisdiction before moving on to any merits decisions."

IV. The Party Invoking The Power Of The Court Must Show Standing

Meland v. Weber, U.S. Lexis 18378 (9th Cir., 2021)

"The Party invoking Federal Jurisdiction bears the burden of establishing the elements of Standing, and each element must be supported in the same way as any other matter on which the Plaintiff bears the burden of proof i.e., with the manner and degree of evidence required at the successive stages of litigation." See also Warth v. Seldin, 422 U.S. 490 (2nd Cir., 1975); City of Los Angeles v. Lyons, 75 L.Ed.2d 675 (1983)

V. Satisfying The Requirement Of Article III Standing

In re Sisk, 962 F.3d 1133 (9th Cir.,2020)

"Article III Standing demands that a Party demonstrate 1) An injinjury in fact, 2) A casual connection between the injury and the conduct complained of, and 3) A likelihood that the injury will be redressed by a favorable decision." (Quoting Lujan v. Defs. of Wildlife, 119 L.Ed. 2d 351) see also Southcentral Found. v. Alaska Native Tribal Health Consortium, 975 F. 3d 831 (9th Cir., 2020)

VI. Standing Is Found Only At The Time The Action Began

Lujan V. Defs. of Wildlife, 504 at 561 (8th Cir., 1992)

"As with all questions of Subject-Matter Jurisdiction except mootness, Standing is... Determined as of the filing of the complaint." See also Lyon v. Gila River Indian Community, (In re Schugg) 688 Fed Appx 477 (9th Cir., 2012); Yamada v. Snipes, 786 F.3d 862 (9th Cir., 2002); Biodiversity Legal Found. v. Badgley, 309 F.3d 1166; Defenders of Wildlife, 504 U.S. at 569 n.4; Los Angeles County Bar Association v. E.U., 979 F.2d 697 (9th Cir., 1992)

VII. Standing Implies Subject-Matter Jurisdiction Which Without The Court Must Dismiss The Action

Cetacean cmty. v. Bush, 386 F.3d 1169 (9th Cir., 2004)

"If a Plaintiff lacks United States Constitutional Article III Standing, Congress may not confer Standing on that Plaintiff by statute. A suit brought by a Plaintiff without United States Constitutional Article III Standing is not a Case or Controversy and a United States Constitutional Article III Federal Court therefore lack Subject-Matter Jurisdiction over the suit. In that event, the suit should be dismissed under FRCP 12(b)(1)."

See also In re Palmdale Hills Prop., LLC., 654 F.3d 868 (9th Cir., 2001); United States v. Cotton, 152 L.Ed. 2d 860 (4th Cir., 2002); Assoc. of Am. Med. Colleges v. U.S., 217 F.3d 778 (9th Cir., 2000)

VIII. Only The United States Attorney Can Prosecute

Article II, §3

The President "shall take care that the Laws be faithfully executed, and shall commission all the officers of the United States."

Title 28 U.S.C.S. §547

"United States Attorneys have responsibility under 28 §547 to prosecute all offenses against United States except as otherwise provided by law."

See also United States v. Bryson, 434 F. Supp. 986 (W.D.Okla., 1977)

"The Court Would not accept for filing a Complaint which had not been authorized by the United States Attorney."

IX. Only The Proper Party Can File A Complaint

FRCrP Rule 3 - United States V. Panza, 381 F. Supp. 1133 (W.D.Penn., 1974) - Footnotes

1. "Except as otherwise provided by law, each Attorney, within his District shall 1) Prosecute for all offenses against the United States." 2. "(a) The Attorney General or any other officer of the Department Of Justice, or any Attorney specifically appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, Civil or Criminal, including Grand Jury Proceedings before Committing Magistrates, Whether or not he is a resident of the District in which the prosecution is brought."

United States v. Bryson, 434 F. Supp. 986 (10th W.D. Okla., 1977) "An individual citizen [cannot] commence a criminal Prosecution."

X. A Task Force Officer's Appointment Is Limited To Four (4) Years Max

Title 5 U.S.C.S. §3372(a)(2)

"An employee of a State or Local Government to his Agency; For work of mutual concern to his Agency and the State or Local Government that he determines will be beneficial to both. The period of an assignment under this subchapter (5 U.S.C.S. §3371 et seq.) may not exceed two (2) years. However, the Head of a Federal Agency may extend the period of an assignment for not more than two (2) additional Years."

FACTS AND MERITS OF THE CASE

I. The Party That Filed The Complaint

On July 30, 2019 Cheryl Banks (Banks) filed a criminal complaint No. 3:19-MJ-00134 (See attached Copy, Appendix A) in the United States District Court for the District of Oregon, Portland Division. This began a Federal Prosecution against Petitioner in violation of the Standing requirement of Article III, §2 of the Constitution of the United States.

In the Affidavit attached to the complaint (See attached Copy, Appendix B), Banks admits to being "a detective employed by the City of Hillsboro Police Department... since July 1993," and that she is "also a Task Force Officer (TFO) with the Federal Bureau of Investigation (FBI)... assigned since October 2002." and that she is "assigned to the Portland Division of the FBI..."

Banks expounds stating that she is "part of the Portland Child Exploitation Task Force (CETF) which includes FBI special agents and a Portland Police bureau Detective..." and that she is "a member of this Task Force."

II. Failure To Establish Standing

According to Title 5 U.S.C.S. §3372(a)(2), Banks' assignment, even if extended, would have caduced in October 2006 without authority for further extension. Notwithstanding, even if Banks membership was up to date, her position would not give her Standing to claim an offense in a Federal Court without specific direction by the Attorney General, as that is the sole duty of the United States Attorney.

III. The Court Has No Power Except To Dismiss

On July 30, 2019 Magistrate Youlee Yim You (Judge You) failed to perform the duty of the Court and accepted for filing a complaint not authorized by a United States Attorney (See attached Docket Entry 1, Appendix C) in violation of the Article III Standing requirement which Banks could not possibly meet.

The Court established a lack of Standing according to their obligation, was thus knowingly without Subject-Matter Jurisdiction, could not proceed past the complaint to establish Standing, and entered judgement without Constitutional Power.

Judge You's only function was that of admitting the fact and dismissing the cause. The Court thus lacks Jurisdiction over Banks' purported Criminal claim against Petitioner. However, to date the Courts refuse to perform their only duty to dismiss the immediate case.

On Appeal, Petitioner raised a challenge to the District Court's lack of Standing. The Government was not opposed to the argument nor did the Court of Appeals for the Ninth Circuit address the issue. This brings Petitioner and sufficiently gives authority to this Court for an issuance of Mandamus.

MANDAMUS SHOULD ISSUE

I. Petitioner Has Proper Grounds For Relief

Based on the facts aforestated, Petitioner has sufficiently presented: 1) A clear right to dismissal of this case for lack of Article III Standing, 2) Respondents have committed a clear abuse of discretion and their only clear duty to act is dismissal of this case. 3) Because no Article III Standing can be Established, and

the Government is unopposed to any challenge of standing, the Courts having been tacit on the subject have no power to refuse and dismissal of this case is the only suitable remedy.

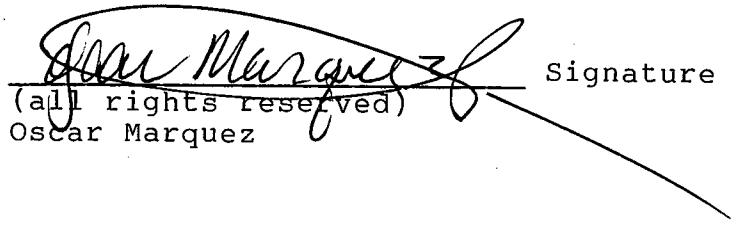
Since the Courts have violated a non-discretionary Duty, the Petitioner necessarily has a clear and indisputable right to relief.

CONCLUSION

For the reasons stated, Petitioner implores this Honorable Article III Court of the United States grant the requested Great Writ of Mandamus and command the United States District Court for the District Of Oregon, Portland Division to dismiss the action filed on July 30, 2019 in that Court against Petitioner, for lack of Article III Standing, with Prejudice, immediately and without condition.

Dated: 12-17-2023

Respectfully Submitted,



Signature

Oscar Marquez

NOT FOR PUBLICATION

FILED

NOV 10 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. OSCAR ADRIAN MARQUEZ, Defendant-Appellant.	No. 21-30134 D.C. Nos. 3:19-cr-00356-MO-1 3:19-cr-00356-MO MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Argued and Submitted October 19, 2022
Portland, Oregon

Before: BADE and SANCHEZ, Circuit Judges, and LEFKOW,** District Judge.

Oscar Adrian Marquez appeals the district court's judgment of conviction following a jury verdict. We have jurisdiction pursuant to 28 U.S.C. § 1291, and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Joan H. Lefkow, United States District Judge for the Northern District of Illinois, sitting by designation.

we affirm.[1]

1. "We review de novo a district court's decision to dismiss on Speedy Trial Act grounds and its findings of fact for clear error." *United States v. Olsen*, 21 F.4th 1036, 1040 (9th Cir. 2022) (per curiam). "A district court's ends of justice determination will be reversed only if it is clearly erroneous." *Id.*

Marquez argues that the district court violated the Speedy Trial Act when it continued the trial and excluded time from January 21 to March 4, 2020, and September 22 to November 10, 2020.[2] The district court excluded the former time period after finding that both sides required additional time to prepare for trial due to a superseding indictment that added two victims, four charges, and involved "more witnesses than perhaps was once contemplated." The district court excluded the latter time period due to the unavailability of a key government witness and under Standing Order 2020-9, which required district courts in the District of Oregon to continue all trials scheduled to commence before June 1, 2020 due to the COVID-19 pandemic. There was no clear error in the district court's determination that the ends of justice were served by these continuances.

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[1] Marquez's request to consider his supplemental pro se brief is denied. Dkt. No. 40; *see Jones v. Barnes*, 463 U.S. 745, 752-53 (1983).

[2] Because we find no clear error in excluding these two time periods, we need not reach the question whether the trial court erred in excluding the time period from October 11 to October 29, 2019.

See 18 U.S.C. § 3161(h)(7); *United States v. Dota*, 33 F.3d 1179, 1182-83 (9th Cir. 1994).

2. "We review the district court's denial of the motion to dismiss on Sixth Amendment grounds de novo, but review findings of fact for clear error." *United States v. King*, 483 F.3d 969, 975 n.6 (9th Cir. 2007). To determine whether Marquez's Sixth Amendment right to a speedy trial was violated, we consider the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The "focal inquiry" is the reason for the delay. *United States v. Sears, Roebuck & Co.*, 877 F.2d 734, 739 (9th Cir. 1989). "[A] trial which complies with the [Speedy Trial] Act raises a strong presumption of compliance with the Constitution." *United States v. Baker*, 63 F.3d 1478, 1497 (9th Cir. 1995).

Although Marquez remained in pretrial custody for approximately 14 months, a presumptively prejudicial delay, the balance of factors weighs against his position. Most of the delay was attributable to valid reasons, including the onset of the global COVID-19 pandemic and the district court's response to the pandemic under Standing Order 2020-9, appointment of new defense counsel, the unavailability of an important government witness, new discovery and evidence, and a third continuance that Marquez does not challenge. Furthermore, at least some of the delay occurred due to Marquez's request for a continuance and his

own behavior, which caused one of his court-appointed attorneys to withdraw before trial. *See United States v. Sutcliffe*, 505 F.3d 944, 957 (9th Cir. 2007) (finding third *Barker* factor weighed against the defendant because he "sabotage[d] his relationship with each appointed attorney, necessitating the delays"); *United States v. Tanh Huu Lam*, 251 F.3d 852, 859 (9th Cir. 2001) ("If . . . the defendant is responsible for the delay in his trial, then he carries a heavy burden of demonstrating actual prejudice . . . ."). We find that the district court did not violate Marquez's constitutional right to a speedy trial.

3. "[W]e have not yet clarified whether denial of a *Faretta* request is reviewed de novo or for abuse of discretion." *United States v. Kaczynski*, 239 F.3d 1108, 1116 (9th Cir. 2001); *see Faretta v. California*, 422 U.S. 806, 835 (1975). We conclude that Marquez's claim fails under either standard of review. A waiver of counsel is considered "knowing and intelligent" only if the defendant is made aware of: "(1) the nature of the charges against him; (2) the possible penalties; and (3) the dangers and disadvantages of self-representation." *United States v. Farhad*, 190 F.3d 1097, 1099 (9th Cir. 1999) (per curiam). We must evaluate this question with caution, indulging "every reasonable presumption against waiver." *United States v. Arlt*, 41 F.3d 516, 520 (9th Cir. 1994) (citation omitted).

After the district court adequately informed Marquez of the risks of self-representation, Marquez responded that he did not understand.[3] This inquiry established that the district court could not allow Marquez to represent himself because his waiver was not knowing and intelligent. *See United States v. Erskine*, 355 F.3d 1161, 1168-69, 1171 (9th Cir. 2004) (concluding the defendant "did not intelligently and voluntarily waive" his right to counsel because he did not understand the possible penalties he faced, even though he understood the dangers of self-representation).

4. The district court's interpretation of the United States Sentencing Guidelines (U.S.S.G.) and decisions regarding grouping offenses are reviewed de novo. *United States v. Scheele*, 231 F.3d 492, 497 (9th Cir. 2000); *United States v. Melchor-Zaragoza*, 351 F.3d 925, 927 (9th Cir. 2003). "[F]actual findings in the sentencing phase are reviewed for clear error, but must be supported by a preponderance of the evidence." *Scheele*, 231 F.3d at 497. Marquez argues that the district court erred at sentencing when it applied an obstruction of justice enhancement, failed to group Count 1 with Counts 2 and 3, and applied a statutory sentencing enhancement under 18 U.S.C. § 2265A.

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[3] Marquez has waived any challenge to the adequacy of the district court's advice on the risks of self-representation by failing to raise it in his briefs. *See Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F.*, 979 F.2d 721, 726 (9th Cir. 1992).

The district court did not clearly err in finding that Marquez "attempt[ed] to intimidate or otherwise influence" a witness based on evidence he called a witness from jail and discussed her cooperation with investigators. *See* U.S.S.G. § 3C1.1 app. n.4. That there may be other potential reasons why the witness was reluctant to testify after the phone call does not render the district court's obstruction of justice finding clearly erroneous. *See United States v. Perez*, 962 F.3d 420, 451-52 (9th Cir. 2020).

Nor did the district court err in its grouping determinations. Even if the counts involve only one primary victim, a question we need not reach, the grouping determination would still be correct because Count 1 does not involve the same composite harms as Counts 2 and 3. U.S.S.G. § 3D1.2(b), app. n.4; *United States v. Espinoza-Baza*, 647 F.3d 1182, 1194 (9th Cir. 2011).

However, the district court erred when it applied 18 U.S.C. § 2265A, the repeat offender penalty enhancement, which doubled each count's statutory maximum sentence from 5 years' imprisonment to 10 years.[4] The district court further erred when it applied U.S.S.G. § 5G1.1(a), which applies to sentencing on a single count of conviction, because Marquez was sentenced on multiple counts.

[4] Although the Ninth Circuit has not determined whether the categorical or conduct-based approach applies to 18 U.S.C. § 2265A, the parties agree that the enhancement here was in error under either approach.

See U.S.S.G. § 5G1.2. The district court sentenced Marquez to consecutive 60-month sentences on Counts 1 and 2 each and concurrent 42-month sentences on the remaining three counts, for a total of 120 months.

For preserved errors that are not of constitutional magnitude, this Court "must reverse unless there is a 'fair assurance' of harmlessness or, stated otherwise, unless it is more probable than not that the error did not materially affect the verdict." *United States v. Morales*, 108 F.3d 1031, 1040 (9th Cir. 1997) (en banc) (citation omitted); *see also United States v. Beng-Salazar*, 452 F.3d 1088, 1096 (9th Cir. 2006).

It is more probable than not that the errors did not materially affect the sentence imposed here. In sentencing Marquez to 120 months, which the district court believed was the statutory maximum, the district court considered the nature and circumstances of the offenses, Marquez's history and circumstances, and relevant evidence regarding the impact of his conduct on the victims. The court determined that a sentence of 120 months was appropriate after finding Marquez "unusually manipulative," "unusually unhinged," "unusually dangerous," and "unusually obsessive." The court also found that Marquez's "dangerousness and manipulativeness" occurred over "an unusually lengthy span of [time]." It concluded that the sentence was warranted after "careful comparison of this case to other cases" and "tak[ing] into account . . . what I think are unusual factors in this

case, and my own opportunity to evaluate the defendant's dangerousness and criminality."

Given the district court's express findings on the record and its disinclination to sentence below a term of 120 months, we conclude that its sentencing errors were harmless. The district court made clear from its findings on the record that remanding would only result in the same or a longer sentence. *See United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 n.5 (9th Cir. 2011); *United States v. Ali*, 620 F.3d 1062, 1074 (9th Cir. 2010).

AFFIRMED.

Additional material from this filing is available in the Clerk's Office.