

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSHUA OMAR GARCIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

After indicting Mr. Garcia on federal charges, the government delayed bringing him into federal custody for 23 months as it waited for the completion of his state prosecution. Employing an ad hoc approach, the Tenth Circuit determined the government's reason for delay was valid and did not violate Mr. Garcia's Sixth Amendment speedy-trial right. The Third Circuit has held that such a reason for delay is per se invalid, while the Fourth Circuit has deemed it per se justifiable. Thus, the question presented is:

Under what circumstances, if any, is waiting for another sovereign to complete their proceedings against a defendant a justifiable reason for delay under the Sixth Amendment's Speedy Trial Clause?

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
DECISIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	3
I. The federal government waited 23 months to bring Mr. Garcia into federal custody.....	3
II. The district court found the reason for the delay weighed against the government . . .	3
III. The Tenth Circuit held the delay was justified.	5
REASONS FOR GRANTING THE WRIT	6
This Court should grant certiorari to resolve the circuit split and determine when, if ever, the federal government is justified in unilaterally delaying prosecuting an indictment solely due to the existence of a pending state case.	6
CONCLUSION	11

APPENDIX

Decision below: <i>United States v. Garcia</i> , 59 F.th 1059 (10th Cir. 2023)	A1
Order Granting Motion to Dismiss: <i>United States v. Garcia</i> , 469 F. Supp. 3d 1050 (D. Colo. 2020)	A9
Order Denying Motion to Reconsider: <i>United States v. Garcia</i> , No. 17-cr-358, 2020 WL 5653514 (D. Colo. Sept. 23, 2020)	A17

TABLE OF AUTHORITIES

Cases

<i>Barker v. Wingo</i> , 407 U.S. 514 (1972).....	3, 4
<i>Gamble v. United States</i> , 139 S. Ct. 1960 (2019).....	9
<i>United States v. Battis</i> , 589 F.3d 673 (3d Cir. 2009)	8
<i>United States v. Garcia</i> , 59 F.4th 1059 (10th Cir. 2023)	3, 4, 5
<i>United States v. Myers</i> , 930 F.3d 1113 (9th Cir. 2019).....	9
<i>United States v. Schreane</i> , 331 F.3d 548 (6th Cir. 2003)	8
<i>United States v. Seltzer</i> , 595 F.3d 1170 (10th Cir. 2010).....	4, 8
<i>United States v. Thomas</i> , 55 F.3d 144 (4th Cir. 1995)	7, 8

Statutes

28 U.S.C. § 1254	1
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Other Authorities

<i>U.S. Attorney’s Office Joins Effort to Crackdown on Violent Crime in Denver</i> (Nov. 10, 2022).....	10
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PETITION FOR WRIT OF CERTIORARI

Petitioner Joshua Omar Garcia respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

DECISIONS BELOW

The decision of the United States Court of Appeals for the Tenth Circuit is published at 59 F.4th 1059 (10th Cir. 2023) and is reproduced in the Appendix at A1. The district court's relevant orders are available at 469 F. Supp. 3d 1050 (D. Colo. 2020) (order granting motion to dismiss on speedy trial grounds), and No. 17-cr-358, 2020 WL 5653514 (D. Colo. Sept. 23, 2020) (order denying reconsideration). They are reproduced in the Appendix at A9 and A17, respectively.

JURISDICTION

The Tenth Circuit entered judgment on February 8, 2023. *See* App. at A1. This petition is being filed ninety days after the entry of judgment and is therefore timely. *See* Sup. Ct. R. 14. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution Amendment VI. Jury trials for crimes, and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

I. The federal government waited 23 months to bring Mr. Garcia into federal custody.

On July 3, 2017, Mr. Garcia allegedly shoplifted several items from a Kmart before brandishing and discharging a firearm in the parking lot when confronted by Kmart employees. *United States v. Garcia*, 59 F.4th 1059, 1063 (10th Cir. 2023). Two days later, Mr. Garcia was apprehended at his trailer, during which time he allegedly discharged a firearm at police officers. *Id.* Mr. Garcia faced charges in Colorado state court based solely on the latter incident on July 5. *Id.*

On September 27, 2017, a federal grand jury indicted Mr. Garcia on three counts stemming from the former incident on July 3. *Id.* at 1064. The federal government made no attempt to bring Mr. Garcia into federal custody or otherwise advance his case until the state prosecution concluded nearly two years later. *Id.*

II. The district court granted the motion to dismiss on constitutional speedy trial grounds.

Mr. Garcia moved to dismiss the federal indictment on constitutional speedy trial grounds based on the nearly two-year delay between the return of the indictment and his initial appearance in federal court. His motion addressed the four so-called *Barker* factors: (1) length of the delay; (2) reason for the delay; (3) assertion of the right; and (4) prejudice. *See Barker v. Wingo*, 407 U.S. 514, 530-32 (1972). He argued that the 23-month delay was presumptively prejudicial; the government failed to show that its purposeful 23-month delay while awaiting the conclusion of the state case was

necessary; and he asserted his rights by reaching out to the government during the delay. Finally, he asserted that he was prejudiced in numerous ways, including that a federal hold prevented him from bonding out of state custody and that surveillance footage that would have corroborated his defense had been lost.

The government opposed the motion. It argued that intentionally delaying the federal prosecution until the state prosecution was completed was reasonable due to the overlap in the charges, the logistical burden that concurrent proceedings would cause, and the complexity of the charges. It also argued that the assertion-of-the-right factor was neutral and that Mr. Garcia suffered no prejudice as a result of the delay.

The district court granted the motion to dismiss, finding that all four *Barker* factors weighed in Mr. Garcia's favor.

As to the reason for delay, the district court recognized that, in the Tenth Circuit, "waiting for another sovereign to complete its prosecution does not justify every delay, and '[t]he mere fact that the defendant was incarcerated on a previous charge for a portion of the delay does not by itself excuse the delay.'" *United States v. Garcia*, 469 F. Supp. 3d 1050, 1058-59 (quoting *United States v. Seltzer*, 595 F.3d 1170, 1178 (10th Cir. 2010)). Rather, the "government must make a particularized showing of why the circumstances require the conclusion of the state proceedings before the federal proceedings can continue." *Id.* at 1059 (quoting *Seltzer*, 595 F.3d at 1178). The district court concluded that the "Government has failed to show that the delay was necessary under the circumstances." *Id.*

The court's conclusion was based on several underlying factual findings. First, it found that "the overlap between the federal and state proceedings was minimal." *Id.* That's because the only commonality between the July 3 incident and the July 5 incident was that the same firearm was used. *Id.* "Otherwise, the two proceedings are both factually and legally distinct." *Id.* Second, the district court found that "the logistics required to prosecute both cases simultaneously would not have been unduly burdensome." *Id.* In the court's view, it would not have been difficult to document any chain of custody transfer of the firearm, and the state and federal authorities were capable of coordinating the transfer of a prisoner being housed a mere 24 miles from the federal courthouse. *Id.* "Finally, the charges at issue are not complex." *Id.* "The operative facts involved in the instant case are straightforward: Mr. Garcia allegedly discharged a firearm that he was prohibited from possessing as he left the premises." *Id.* "The state court proceedings were not complex either." *Id.* n.3. "Mr. Garcia was charged with attempted murder and eventually pled guilty to an assault charge. Moreover, the charges were based on events that were limited in scope and duration such that they were not complicated." *Id.*

Accordingly, the district court granted the motion and dismissed the indictment. The government appealed.

III. The Tenth Circuit held the delay was justified.

The Tenth Circuit reversed. As to the second factor, which it deemed "especially important," *Garcia*, 59 F.4th at 1066, it found that the 23-month delay was

justified because there was significant overlap in the charges, concurrent prosecutions would be logistically cumbersome, and the charges were complex.

First, according to the Tenth Circuit, the overlap in the charges was significant because the federal felon-in-possession count charged Mr. Garcia with illegally possessing the firearm from July 3 up to and including July 5, 2017. *Id.* at 1066-67.

Second, it concluded that concurrent prosecutions would be a burden on the government due to “jurisdictional conflicts, issues of comity, and the logistical ordeal of transporting not only defendant, but evidence critical to both cases.” *Id.* at 1067. For example, “transporting the firearm between jurisdictions would lead to chain-of-custody issues and an increased logistical burden on both sovereigns.” *Id.*

Finally, the Tenth Circuit determined the charges against Mr. Garcia were complex. *Id.* According to the Tenth Circuit, murder charges are “inherently complex,” even if charged as attempt, and the fact that Mr. Garcia ultimately pleaded guilty to lesser charges was irrelevant. *Id.*

Accordingly, the Tenth Circuit reversed the district court and reinstated the indictment.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to resolve a circuit split and determine when, if ever, the federal government is justified in delaying prosecution until a state case is completed.

Several circuit courts have considered whether the government’s waiting for the conclusion of a state case is a valid reason for delay under the second *Barker* factor.

They have taken three different approaches, two of which are diametrically opposed. The Fourth and Sixth Circuits hold that waiting for the state prosecution is always a *valid* justification; the Third Circuit holds it is always *invalid*; the Ninth and Tenth Circuits say it depends on the circumstances. This Court should grant certiorari to resolve this split and decide when, if ever, the federal government is justified in delaying its prosecution until concurrent state proceedings have completed.

The first Court of Appeals to have addressed this issue was the Fourth Circuit in *United States v. Thomas*, 55 F.3d 144, 151 (4th Cir. 1995). It held that waiting for another sovereign to conclude their proceedings is always reasonable. That is, the “need to allow [a defendant] to be prosecuted by the State without interference by the federal government” is “an obvious reason for delaying [the] federal prosecution.” *Id.* at 150. To support its per se position, the Fourth Circuit conjured up an utterly nightmarish (and highly unlikely) scenario: “To do otherwise would be to mire the state and federal systems in innumerable opposing writs, to increase inmate transportation back and forth between the state and federal systems with consequent additional safety risks and administrative costs, and generally to throw parallel federal and state prosecutions into confusion and disarray.” *Id.* at 150-51. The Sixth Circuit has expressly adopted the Fourth Circuit’s approach. See *United States v. Schreane*, 331 F.3d 548 (6th Cir. 2003) (“[S]imply waiting for another sovereign to finish prosecuting a defendant is without question a valid reason for delay.”).

The Third Circuit takes the opposite approach, recognizing that the government has an affirmative duty to timely try the defendant once it brings an indictment: “Once federal prosecutors bring an indictment against a defendant, they have a duty to notify the District Court that the defendant should be arraigned and appointed counsel, and to bring the defendant to trial expeditiously.” *United States v. Battis*, 589 F.3d 673, 680 (3d Cir. 2009). “This duty persists even when state authorities have a strong interest in bringing their own case against the same defendant. The Government cannot indict a defendant and then delay a case indefinitely, without any notice to a federal judge, merely because it is aware of a state proceeding involving the same defendant.” *Id.* Thus, the Third Circuit finds this reason for delay weighs against the government. *Id.*

Finally, while recognizing that the Third and Fourth Circuits have opposing views on the issue, the Tenth Circuit staked out a middle ground, concluding that “awaiting the completion of another sovereign’s prosecution may be a plausible reason for delay in some circumstances, but that does not necessarily mean that it is a justifiable excuse in every case.” *United States v. Seltzer*, 595 F.3d 1170, 1178 (10th Cir. 2010). The Tenth Circuit looks to three “typical reasons for respecting ongoing state proceedings” to determine whether the delay was justified: (1) whether there was “overlap in the charges”; (2) whether “concurrent proceedings” would be “logistically cumbersome”; and (3) “the simplicity” (or complexity) “of the charges.” *Id.*

The Ninth Circuit, while acknowledging the split, recently adopted the Tenth Circuit’s “ad hoc” approach. *United States v. Myers*, 930 F.3d 1113, 1121 (9th Cir. 2019). However, unlike the Tenth Circuit, it did not specify what subfactors a court should consider, instead generally “hold[ing] that where a delay arises due to concurrent state and federal proceedings, a court must consider the nature and circumstances of the delay in order to determine whether (and how much) it weighs against the government.” *Id.* However, it did provide “overlap” in the charges as an example of a circumstance that might justify delay. *Id.*

This circuit split alone is reason enough for this Court to grant certiorari. That this issue is becoming increasingly more common makes it prudent to do so now.

Historically, state and federal crimes were distinct, so whether the Sixth Amendment’s Speedy Trial Clause permitted the federal government to delay its prosecution for state proceedings was unlikely to arise. *See Gamble v. United States*, 139 S. Ct. 1960, 1980 (2019) (Thomas, J., concurring) (“The founding generation foresaw very limited potential for overlapping criminal prosecutions by the States and the Federal Government.”). However, two modern features of federal criminal law are making this issue more prevalent. The first is “the proliferation of federal criminal law.” *Id.* at 1979. As this Court recently observed, the “overlap of federal and [state] criminal codes heightens the risk of successive prosecutions under state and federal law for the same conduct.” *Id.* And second, the federal government has recently decided to focus on prosecuting gun charges against defendants already facing

criminal charges in state court in order to take advantage of the stiffer federal penalties, including mandatory minimum prison sentences. *E.g.*, Press Release, Dep't Justice, *U.S. Attorney's Office Joins Effort to Crackdown on Violent Crime in Denver* (Nov. 10, 2022), <https://www.justice.gov/usao-co/pr/us-attorneys-office-joins-effort-crackdown-violent-crime-denver-0>. Thus, it is important for this Court to resolve the dispute over whether the federal government is justified in unilaterally delaying its prosecution in these cases.

Indeed, Mr. Garcia's case is fairly typical and exemplifies why this Court must weigh in. Mr. Garcia was first charged in state court with violent crimes involving a firearm. Seeking to tack on additional prison time, the federal government indicted Mr. Garcia on federal firearms offenses. Rather than bring Mr. Garcia into federal custody for his initial appearance and, most importantly, appointment of counsel, the government waited nearly two years to prosecute his case. Whether the government was justified in doing so arbitrarily turns on which court is deciding his case. In the Fourth Circuit, the government's delay would be *per se* reasonable and consistent with the Sixth Amendment. In the Third Circuit, the government's delay was wholly unjustified and unconstitutional. Under the Ninth and Tenth Circuits' *ad hoc* approach, it is unclear. The district court found it was unjustified, but the Tenth Circuit disagreed. What result a district court in the Ninth Circuit would reach is unknown, as it has not even articulated what factors should be considered.

This amount of uncertainty surrounding an increasingly common occurrence is untenable. Accordingly, this Court should grant certiorari to decide whether the federal government may unilaterally delay its prosecution until the state completes theirs, and if so, what factors a court should consider in deciding whether the delay was justified.

CONCLUSION

Mr. Garcia respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

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