

ORIGINAL

No. \_\_\_\_\_

23-7656

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAY 30 2024

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

CARL MONROE GORDON \_\_\_\_\_ — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA  
\_\_\_\_\_ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARL MONROE GORDON  
\_\_\_\_\_

(Your Name)

FEDERAL CORRECTIONAL INSTITUTION-PEKIN  
\_\_\_\_\_

(Address)

P.O. BOX 5000 PEKIN, IL 61555  
\_\_\_\_\_

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

**QUESTION(S) PRESENTED**

Was defendants Speedy Trial Rights Act Violated?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

Baker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101  
(1972).....Passim

## TABLE OF CONTENTS

OPINIONS BELOW.....	1 <sup>2</sup>
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	24
CONCLUSION.....	25

## INDEX TO APPENDICES

APPENDIX A	Carl Monroe Gordon v. U.S. Appeals court decision 93 F.4t 294:2024 U.S. App. Lexis 3784 No. 22-50043
APPENDIX B	Judgement issues as the mandate for the Rehearing from the U.S. Appeals Court from the 5th Circuit.
APPENDIX C	Request for Extention of time to file motion for Rehearing and Motion to withdraw as attorney of record by counsel on appeal Brock Benjamin.
APPENDIX D	U.S. v. Carl Monroe Gordon, Western District of Texas Court Decision EP-20-CR-26-DCG, 2021 U.S. Lexis 87140
APPENDIX E	
APPENDIX F	

## TABLE OF AUTHORITIES

Cases	Page
<i>Barker v. Wingo</i> , 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972) .....	7,8,10,11,13
<i>Coffin v. United States</i> , 156 U.S. 432, 453 (1895) .....	14
<i>Doggett v. United States</i> , 505 U.S. 647, 654 (1992) .....	19
<i>Furlow v. United States</i> , 644 F.2d 764, 768-69 .....	19
<i>Klopper v. North Carolina</i> , 386 U.S. 213, 223-26 (1967) .....	8,10
<i>Marshall v. Gates</i> , 44 F.3d 722, 724-25 (9 <sup>th</sup> Cir. 1995) .....	22
<i>Pu. L. No. 93-619</i> , 88 Stat. 2076 .....	19
<i>Reynolds v. United States</i> , 238 F.2d 460, 463 (9 <sup>th</sup> Cir. 1956) .....	14
<i>Roman Catholic Diocese</i> , 141 S.Ct. 63, 68 (2020) .....	23
<i>United States v. Bigler</i> , 810 F.2d 1317, 1323 (5 <sup>th</sup> Cir. 1987) .....	22
<i>United States v. Burrell</i> , 634 F.3d 284, 287 (5 <sup>th</sup> Cir. 2011) .....	22
<i>United States v. Frye</i> , 489 F.3d 201, 211 (5 <sup>th</sup> Cir. 2007) .....	15
<i>United States v. Harris</i> , 566 F.3d 422, 433 (5 <sup>th</sup> Cir. 2009) .....	17
<i>United States v. Hernandez</i> , 457 F.3d 416, 420 (5 <sup>th</sup> Cir. 2006) .....	11, 16
<i>United States v. Hernandez-Mejia</i> , 406 F. App'x 330, 337 (10 <sup>th</sup> Cir. 2011) .....	11
<i>United States v. Litton Sys., Inc.</i> , 722 F.2d 264, 271 (5 <sup>th</sup> Cir. 1984) .....	15
<i>United States v. Nance</i> , 666 F.3d 353, 355 (9 <sup>th</sup> Cir. 1982) .....	20
<i>United States v. Olsen</i> , 2022 U.S. Dist. Lexis 178237 *46 .....	14
<i>United States v. Parker</i> , 505 F.3d 323, 328 (5 <sup>th</sup> Cir. 2007) .....	11
<i>United States v. Serna-Villarreal</i> , 352 F.3d 225, 230-31 (5 <sup>th</sup> Cir. 2003) .....	10
<i>Williams v. United States District Court</i> , 658 F.2d 430, 435 (6 <sup>th</sup> Cir. 1981) .....	22
<i>Zedner v. United States</i> , 547 U.S. 489, 498-99 (2006) .....	20

## STATUTES AND RULES

### Other Authorities

18 U.S.C. § 3161(h)(7)(A) .....	5,6
18 U.S.C. § 3162(h)(1)-(6) .....	20
18 U.S.C. § 3161 (Speedy Trial Act) .....	2,4,7,8,9
18 U.S.C. § 3742 .....	2
28 U.S.C. § 1291) .....	2
28 U.S.C. § 2071(b) .....	2
Fed. R. Evid. 201(b)(2) .....	13
Fed. R. App. P. 4(b)(1)(A)(i) .....	2
Sentencing Reform Act of 1984 .....	3

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at United states Court Of Appeals; or, 5th Circuit  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 2/16/2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 4/2/2024, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Sixth Amendment causes a court to evaluate a claim of violation of the constitutional right to a speedy trial by applying the four-factor balancing test articulated in Barker v. Wingo, 407 U.S. 514 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

18 U.S.C. 3161 (Speedy Trial Act)



## STATEMENT OF THE CASE

Carl Monroe Gordon ("Gordon") was stalked entering the United States on the day before Christmas Eve, December 23, 2020. He was arrested at the Hartsfield/Jackson International Airport on a sealed criminal complaint. (ROA.31, 35). This was on allegations that were alleged to have been committed from July 2, through July 12, 2019. (ROA.32). The arrest at Hartsfield was orchestrated more for theatrics, than any legitimate issue as Gordon was returning from overseas and the government knew he'd be returning on that flight and then continuing to Arkansas. *See Preliminary and Detention ("P&D") transcript* (ROA 7531 to 7565 01/15/2020).

The preliminary and detention hearing was held on January 15, 2020, 23 days after his arrest, and five days after his initial hearing in front of a United States Magistrate. (ROA.10, 45). The testimony at the P&D hearing was much like the rest of the case that resulted in one count, Count four, being directed out at trial. Agent Baumlee overstated the facts when compared to the evidence (ROA 169).

8 MS. WINTERS: Are you also aware of an allegation  
9 involving the Defendant's half niece or cousin?  
10 AGENT BAUMLE: Yes, ma'am. It was approximately, to  
11 my knowledge, that Mr. Gordon had applied and received  
12 employment with the [inaudible] County Sheriff's Department.  
13 However, he was terminated from his employment for failure to  
14 take a polygraph examination, and that was in regards to, from  
15 what I have been told --

The investigation

showed that testimony was simply incorrect at best and a false statement if intended to deceive. As reports, believed to be in the possession of the government at the time the statement was made, showed clearly that-

Subject: Fd: 1386636

Judy will you pull this file and resend the AO notice to him. He never received his notices as it was returned. He is still at the same address that was listed from years ago.

-----Original Message-----

From: Debbie Roark (ASP)

Sent: Tuesday, September 11, 2012 12:06 PM

To: Michelle Gatlin

Subject: Re: [redacted]

he [Gordon] never received the notice of the polygraph! (ROA.170).

Gordon was indicted on January 22, 2020, for five counts of sexual acts against his two former step-children. (ROA.50). He waived his arraignment in writing on January 28, 2020. (ROA.59) Then requested an administrative pass for the February 5, 2020, Docket Call after having requested "zero" continuances. (ROA.70). The Court entered an Order that granted a pass and waived time within the meaning of the Speedy Trial Act, 18 U.S.C. § 3161. (ROA.72).

Shortly after that time frame, Gordon filed a Motion for Revocation of Detention Order seeking release. (ROA.74). The government filed a response opposing the release and request. (ROA.85). The Court after holding a hearing and reviewing the transcript and evidence provided by Gordon, denied the request to revoke the detention order on March 18, 2020. (ROA.110).

The Court then issued an “Order Resetting Trial and Docket Settings” which outlined the Orders issued by Chief Judge Orlando Garcia but did not address Gordon specifically. It made general findings under 18 U.S.C. § 3161(h)(7)(A). (ROA.112). The Court then reset that docket call and made additional general findings under 18 U.S.C. § 3161(h)(7)(A). (ROA.114). Gordon followed that order up six days later and filed a Motion for Reconsideration of [Doc. 34] Order Denying Motion to Revoke Detention Order. (ROA.115). The government filed a response. (ROA.129). The Court then vacated on April 13, 2020, the May 6, 2020, docket call. (ROA.141). The same day it issued an order titled “Order Resetting Jury Selection and Trial”. This order generically addressed 18 U.S.C. § 3161(h)(7)(A). (ROA.142) when it reset Jury Selection to June 1, 2020.

The Government then filed doc. 45, “Government’s Motion to Continue Jury Selection and Trial Setting.” (ROA.150). The defendant did not take a position and the Court deferred a ruling for months.

On May 12, 2020, the Court entered an “Order Resetting Trial and Docket Settings” and VACATED the settings to a time on or after June 1, 2020. (ROA.158). The Court had previously set this for trial on June 1, 2020. (ROA.142). However, it promptly set the matter for July 13, 2020, and generally articulated 18 U.S.C. § 3161(h)(7)(A) exclusion. (ROA.160). On June 16, 2020, the Court entered another “Order Resetting Trial and Docket Settings” and set the matter for Monday, August

3, 2020, trial. (ROA.162). However, that setting was vacated on July 14, 2020, and there was no mention of 18 U.S.C. § 3161(h)(7)(A).

The next entry on the Court's docket is a Motion for Reconsideration of Release filed by the Defendant on October 5, 2020. (ROA.166). The Government promptly responded to this request, opposing it in (ROA.175). Gordon followed this up two months later with a "Motion to Dismiss under Cuomo Standard" arguing that the Constitution and the Speedy Trial Act could not be placed on hold during a pandemic. (ROA.184). The Government filed a motion for extension of time on December 11, 2020, at (ROA.190) and followed that up on January 7, 2021, at (ROA.194) with a second motion for extension arguing that the motion filed by the defendant raised new and novel ideas. *Id.* The defendant responded to this with arguments requesting release and objecting to further delay. (ROA.197). The Government withdrew its second request for extension. (ROA.223).

The Court heard the motion, denied it and set the matter for trial on May 3, 2021. (ROA. 226). Gordon was convicted at trial. (ROA.844). This appeal follows. (ROA.7482).

## **SUMMARY OF THE ARGUMENT**

The prosecution of Carl Monroe Gordon took place at time that it was not popular to assert your rights. Gordon asserted his right to a speedy trial immediately and was initially set for a trial four months after he was indicted. The Court granted that relief and that trial date of May 4, 2020, came and went. It came and went for a year before a hearing on a motion to dismiss and a total of 14 months before the trial on the merits.

Gordon was detained for this entire time and despite repeated requests, the government chose to object and continue the trial. The matter was continued by the District Court relying on orders from the Chief Judge that did not comport with the law. These orders and the length of time that Mr. Gordon was detained violated the Sixth Amendment to the Constitution under the *Barker v. Wingo* factors and Congress' enactment of the Speedy Trial Act. The Act's 70 days were blown through and more than approximately 228 days were not excludable by the time of trial.

Gordon requests that this Court see the violations on the face of the record and reverse and remand for an acquittal.

## ARGUMENT

Carl Gordon's trial after being delayed by the Government for four hundred and sixty-eight (468) days violated his right to a Speedy Trial under both the Sixth Amendment to the United States Constitution and 18 U.S.C. §3161 (Speedy Trial Act) harming him and resulting in a void conviction.

### A. Standard of Review-

A court reviews *de novo* a district court's application of the *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), factors. *United States v. Molina-Solorio*, 577 F.3d 300, 304 (5th Cir. 2009). The Court further reviews district court's factual findings for clear error. *Id.*

### B. Constitutional Violation of the Sixth Amendment Right to a Speedy Trial.

The right to a speedy trial has been deemed "fundamental." *Klopfer v. North Carolina*, 386 U.S. 213, 223-26 (1967) ("The history of the right to a speedy trial and its reception in this country clearly establish that it is one of the most basic rights preserved by our Constitution.") That same right has been described as "amorphous" and "slippery". *Barker v. Wingo*, 407 U.S. 514, 522 (1972). The right is said to serve societal interests in the fair and efficient operation of the criminal justice system and in limiting the costs to the community of pretrial detention and its associated effects. *Barker* at 519-21.

In the instant case, Gordon was arrested at the Hartsfield/Jackson International Airport in Atlanta, Georgia on December 23, 2019. (ROA.38). He was ordered detained on January 15, 2020. (ROA.46-48). Gordon was then indicted on January 22, 2020, in Cause No. 20-cr-226-DCG. (ROA.50-52). Gordon waived his arraignment on January 28, 2020, by written waiver. (ROA.59).<sup>1</sup> The Court then entered a standing discovery order on the same date. (ROA.60-67). On January 30, 2020, the undersigned moved for a continuance of the docket call, representing that zero continuances had been requested. (ROA.70-71). The Court granted that continuance by way of written order on January 31, 2020. (ROA.72) Setting the next docket call for March 4, 2020. *Id.*

During this time Gordon had filed a motion to revoke the magistrate's detention order, (ROA.74-78) to which the Government had replied (ROA.85-95) and the Court set for a hearing on March 13, 2020. (ROA.101). The Court denied that motion to revoke the magistrate's detention order. (ROA.110-11). The matter then was set and reset many times. Those are described several times.

However, relevant specifically to the Sixth Amendment argument, Gordon did file:

The initial motion for revocation of his detention on February 12, 2020.  
(ROA.74).

A motion for Reconsideration of his detention on March 31, 2020.  
(ROA.115).

---

<sup>1</sup> The waiver is dated in ink 02/28/2020, however it was accepted and filed stamped 1/28/2020.

Government's Motion to Continue dated May 6, 2020 on which counsel took not position. (ROA.150).

June 16, 2020, the Court entered another "Order Resetting Trial and Docket Settings" and set the matter for Monday, August 3, 2020. trial. (ROA.162). That setting was vacated on July 14, 2020, and there was no mention of 18 U.S.C. § 3161(h)(7)(A).

Another Motion for Reconsideration of his detention on October 5, 2020. (ROA.166).

Motion to Dismiss under Cuomo Standard on December 9, 2020. (ROA.184).

Carl Gordon was detained for over a year by the time that the Motion to Dismiss was heard. He was detained for approximately 468 days or 15 months post indictment when he was tried. He was detained during that entire time.

The Sixth Amendment protects defendants by *minimizing* oppressive pretrial incarceration. *See Klopfer*, 386 U.S. at 222. The Supreme Court has articulated that a determination of whether the defendant's rights have been violated is judged by the four-factor test from *Barker v. Wingo*, 407 U.S. at 530. A court evaluates a claimed violation of the constitutional right to a speedy trial by application of a four-factor balancing test: (1) "length of delay," (2) "the reason for the delay," (3) "the defendant's assertion of his right," and (4) "prejudice to the defendant." *Id.* at 530. The court balances the factors by "weigh[ing] the first three Barker factors . . . against any prejudice suffered by the defendant due to the delay in prosecution. Obviously, in this balancing, the less prejudice a defendant experiences, the less likely it is that a denial of a speedy trial right will be found." *United States v. Serna-Villarreal*, 352 F.3d 225, 230-31 (5th Cir. 2003).



When more than one year has passed, this court undertakes a full *Baker* analysis, *United States v. Hernandez*, 457 F.3d 416, 420 (5th Cir. 2006), looking to the first three factors to decide whether prejudice will be presumed, *id.* at 421. "Prejudice may be presumed where the first three factors weigh 'heavily' in the defendant's favor." *Id.* Otherwise, he must demonstrate actual prejudice. *United States v. Parker*, 505 F.3d 323, 328 (5th Cir. 2007).

1. Length of the Delay.

Here the length of the delay weighs in Gordon's favor and is attributed to the United States. Gordon was detained 468 days prior to trial on this matter. Gordon did not request to begin the process in fact, he challenged it at every turn. Further, he challenged what was a detention during that delay at a remote jail facility, the West Texas Detention Facility in Sierra Blanca Texas.<sup>2</sup> The Supreme Court has unequivocally "reject[ed] . . . the rule that a defendant who fails to demand a speedy trial [at any point in the case] forever waives his right." *Barker*, 407 U.S. at 528; *see United States v. Allen*, 603 F.3d 1202, 1208 n.5 (10<sup>th</sup> Cir. 2010) ("Filing a motion to continue the trial date is not a waiver of the defendant's Speedy Trial Act rights."); *United States v. Hernandez-Mejia*, 406 F. App'x 330, 337 (10th Cir. 2011) ("Further, that three of the continuance motions were filed on behalf of Mr. Hernandez-Mejia

---

<sup>2</sup> West Texas Detention Facility is 90 miles from the Albert Armendariz United States Federal Court house and is located in Sierra Blanca, Texas. This is a town made famous by its arrest and resolution of a case involving Willie Nelson.

is not a factor in determining whether the Speedy Trial Act was violated . . ."). Here Gordon filed only one initial continuance. He took no position on the May 6, 2020, continuance filed by the United States. (ROA.45). But clearly was objecting to the prosecution and continued detention. This is demonstrated by the fact that the case was immediately to be set for trial on May 4, 2020. (ROA.7589)(transcript of Motion to Dismiss hearing).

In his Motion for reconsideration of Order Denying Motion to Revoke Detention Order, Gordon discusses his conditions of detention. (ROA.115-119).

Quoting from the motion:

Further, the detention pending trial also places Mr. Gordon at risk. This risk is real, he is detained at West Texas Detention Facility. That facility currently has at least one pod that is locked down based on Covid-19 quarantine. The undersigned does not know the status of the designation or any infection at that facility, however that is a matter that should weigh heavily in favor of release. Detention there, without an examination of the circumstances and their impact on detainees, specifically related to Mr. Gordon is a valid concern. Mr. Gordon is one year older than an individual who died at a Federal Bureau of Prisons facility in Louisiana.<sup>3</sup> This individual was 47 years old and was serving a sentence, he was not pre-trial like Mr. Gordon. Mr. Gordon is 48. Mr. Gordon facing continued detention under unknown specific conditions at a facility where the water has been shut off several times and under the current unknown medical conditions, may approach a deliberate indifference. The water was shut off several times in 2019, the last in October.<sup>4</sup>

---

<sup>3</sup> See Article attached to the motion at (ROA.120) titled "Inmate dies after contracting coronavirus at Louisiana federal prison."

<sup>4</sup> See Article attached to original Motion regarding ICE transferring detainees out of the facility Gordon was detained at for lack of water date October 19, 2019.

The Supreme Court has long held that the Speedy Trial Clause safeguards the presumption of innocence by minimizing the deprivations that an unresolved accusation of criminal wrongdoing inflicts on a defendant. *See, e.g., Barker v. Wingo*, 407 U.S. 514, 532-533 (1972). Counsel would suggest those deprivations should never include being housed at a facility where the water is shut off in the desert. This factor weighs 'heavily' in the defendant's favor.

2. Reason for the Delay-

There is no other reason for the delay than the government's supplemental prosecution. While the prosecution may bring a case, it may not selectively choose to try a case, detain an individual but yet continue to indict cases creating more detention. The Government continued indicting cases in May 2020 even while it filed a continuance in the instant matter. Counsel in support filing provides a print-out from Texas Western District- El Paso search of cases opened from May 1, 2020 through June 1, 2020. Counsel would seek for the Court to take judicial notice of the document under *Fed. R. Evid.* 201(b)(2) as a document that is not "subject to reasonable dispute because... it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *Id.* The Government over several times opposed lesser violations of Gordon's rights, dismissal of the matter until it could reasonably try the matter, allow a lesser harm of release with conditions.

In *United States v. Olsen*, 2022 U.S. Dist. Lexis 178237 \*46, the Court stated that the prosecution stated it “was wholly blameless for the Central District’s suspension of jury trials.” It continued summarizing that the argument was essentially “the government argues that because the charges against Mr. Olsen are serious, it would be a miscarriage of justice to let this would-be-criminal walk free.”

The *Olsen* Court disregarded pointing to *Coffin v. United States*, 156 U.S. 432, 453 (1895)(“The principle that there is a presumption of innocence in favor of the accused is undoubted law, axiomatic and elementary and its enforcement lies at the foundation of the administration of our criminal law.”) During the pendency of the case and his continued detention the government’s position was firm. The Court must insert itself to protect our system because “as the Ninth Circuit explained in *Reynolds v. United States*, ‘it is ... perfectly plain that the presumption [of innocence], together with related rule on the burden on proof, in guarding against the convict of an innocent person, may in some cases prevent the conviction of a person who is actually guilty.’ 238 F.2d 460, 463 (9<sup>th</sup> Cir. 1956). “This is a calculated risk which society is willing to take.” *Id.* See *Olsen* at \*47.

Mr. Carl Gordon is not admitting that he is guilty, in fact at trial the Government’s case on one count was so weak that it dismissed the Court as a motion for judgment of acquittal was being made. (ROA.19)(ORAL MOTION to Dismiss Count Four (4) of the Indictment by USA as to Carl Monroe Gordon. (mg2)

(Entered: 05/14/2021)). Mr. Carl Gordon maintains his innocence, however anyone who has tried a sexual assault case knows that the only way to obtain an acquittal is when the child directly contradicts themselves and legally, the horrendous allegation cannot stand. This factor weighs 'heavily' in favor of the defendant.

### 3. Defendant's assertion of speedy trial

As is acknowledged in the Motion to Dismiss transcript, Gordon was requesting and being set for a trial a mere four (4) months after his indictment. The Court (ROA.7589) acknowledged that was the relief being provided. This is also reflected in the Motion for Reconsideration (ROA.116) that was filed on March 31, 2020. Defendant asked for and did not receive his speedy trial from the beginning. An assertion of the right to a speedy trial is a "demand for a speedy trial." *United States v. Frye*, 489 F.3d201, 211 (5th Cir. 2007). We have held that this will "generally be an objection to a continuance or a motion asking to go to trial." *Id.* "At the very least," a defendant "should manifest his desire to be tried promptly." *Id.* at 211-12 ((quoting *United States v. Litton Sys., Inc.*, 722 F.2d 264, 271 (5th Cir. 1984))). Here Gordon did that less than two months after he was indicted. This factor weighs 'heavily' in the Defendant's favor.

### 4. Prejudice to the defendant

Gordon believes that he has shown that by more than one year having passed, this court must undertake a full *Baker* analysis, *United States v. Hernandez*, 457

F.3d 416, 420 (5th Cir. 2006)., *id.* at 421. And that "Prejudice may be presumed where the first three factors weigh 'heavily' in the defendant's favor." *Id.* Gordon would submit that prejudice should be presumed.

Alternatively, Gordon was *Actually* prejudiced by the 14-month detention and denial of a Speedy Trial. "Actual prejudice" is assessed in light of the three following interests of the defendant: (1) "to prevent oppressive pretrial incarceration"; (2) "to minimize anxiety and concern of the accused"; and (3) "to limit the possibility that the defense will be impaired." *Barker*, 407 U.S. at 532. See *United States v. Harris*, 566 F.3d 422, 433 (5th Cir. 2009).

*a. to prevent oppressive pretrial incarceration*

Counsel addressed the pre-trial conditions with the Court. Gordon was in a facility (like all facilities at the time) that had COVID positive individuals. Further, this is a facility that has a history of depriving the "detainees" of water. One must also wonder about the care of the inmates when the warden of the facility is subsequently charged with Murder.<sup>5</sup> The Court can as requested previously take judicial notice of this type of information. Or it could take notice of the Immigration and Customs Enforcement Inspection report from February 2016 Office of Detention Oversight which on page 10 listed one of the facilities medical deficiencies-

---

<sup>5</sup> Article available at- <https://www.ksat.com/news/texas/2022/09/30/warden-of-west-texas-immigration-detention-center-and-brother-are-accused-of-manslaughter-in-migrants-shooting-death/> Last visited on November 26, 2022. Also included in motion to supplement.

An interview with facility senior medical staff and a review of facility medical procedures revealed there were no procedures in place to ensure timely receipt of sick call requests or completion of sick call (**Deficiency MC-524**). In one of the sick call requests reviewed by ODO, the detainee complained of chest pains. The date the request was received and triaged was not documented, and the detainee **was not seen by a provider for five days** after writing the request. ICE report at page 10 attached in motion to supplement.

*b. to minimize anxiety and concern of the accused*

Counsel is not stating that all of these occurred during Gordon's time at the facility, however the being "housed" at that facility and detention would certainly cause the type of Anxiety that *Barker* contemplated during pre-trial detention. A further source of anxiety is simply the nature of the charge. One may be presumed innocent but even in a detention facility inmates treat other inmates differently when a sex offense of a child is involved.

*c. to limit the possibility that the defense will be impaired*

In the instant case, for the Motion to Revoke Detention Order there were three individuals who wrote letters on behalf of Carl Gordon's release. His sister Renee Gordon (ROA.104), a soldier who served under him in Iraq, Waldemar Madsen (ROA.106) and another friend and compatriot from Iraq, Terry Vance (ROA.107). Only one of those individuals showed up for trial to testify. The Court can and should presume that the detention of an individual for a year, makes one certainly look guilty if the judge doesn't want to let you out... Further, as the record reflects, while

the indicted actions arose on Fort Bliss, Texas (El Paso), Gordon was from Arkansas and that is where any witnesses would have been located. Detention prevents an individual from reaching out and personally contacting, talking to and meeting with witnesses. A sexual assault investigation is detail oriented and a client on release is sometimes the only person who can access information or individuals. An investigator was used in Arkansas, but that is not the same as the individual approaching witnesses. This was recognized as "[t]he most serious [type of prejudice] ... because the inability of a defendant adequately to prepare his case skews the fairness of the entire system."); *Doggett v. United States*, 505 U.S. 647, 654 (1992). Impossibility of case investigation is a good description of the hampering that is provided when a client is detained and cannot provide assistance to the defense in its investigation.

### **C. Violation of the Speedy Trial Act.**

Congress enacted the Speedy Trial Act in 1974 to give further effect to the Sixth Amendment's guarantee of a speedy trial. *Pu. L. No. 93-619, 88 Stat. 2076*; see *Furlow v. United States*, 644 F.2d 764, 768-69 (describing the Speedy Trial Act as the Sixth Amendment's "implementation.") As all know, the Speedy Trial Act 18 U.S.C. § 3161(c)(1) requires:

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

This 70 days though has always been a magical number as the rule has a number of exceptions that swallow the rule. In this case there are approximately 468 days from the time of the indictment until the trial on the merits. As is the norm, a number of days are excludable. A Court may exclude periods of delay resulting from mental health competency examinations, interlocutory appeals, pretrial motions, the unavailability of essential witnesses and delays to which the defendant agrees. 18 U.S.C. § 3162(h)(1)-(6). The Act also includes a catchall category of excludable time- “ends of justice.” This allows the time to be excluded from a defendant’s speedy trial clock where the judge finds “that the ends of justice service by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3162(h)(7)(A).

This provision permits a district court to grant a continuance to exclude the resulting delay if the court, after considering certain factors, makes on-the-record findings that the ends of justice served by granting the continuance outweigh the public’s and defendant’s interests in a speedy trial. *Zedner v. United States*, 547 U.S. 489, 498-99 (2006).

This provision was intended to be rarely used. *See United States v. Nance*, 666 F.3d 353, 355 (9<sup>th</sup> Cir. 1982)(quoting the Act’s legislative history). In the instant

case, there were multiple "Ends of Justice" continuances. However all of the them have the same feature, they did not contain any facts related to Carl Gordon's case.(ROA.114, 142, 155, 158, 160, 162). The orders that make them just exclude the time but list no factors. The appear to be "automatic" extensions.

At (ROA.214) the government represents that due to "automatic" extensions only 14 of the 70 days have elapsed.<sup>6</sup> Counsel respectfully disagrees that the Constitution, and the Speedy Trial Act should ever recognize "automatic" extensions and waivers in a case where the defendant has vocally expressed his desire. However, if the record (ROA.165) and the order dated 14 July 2020 is referenced, that appears to be what happened. That order (ROA.165) makes no mention of 18 U.S.C. § 3161(h)(7)(A) or the "Ends of Justice." In fact, from July 18, 2020, until January 8, 2021, there is no mention of the ends of justice until that order setting the trial, for May 3, 2021. (ROA.222). While some days are excluded (30 for a pending motion) that time frame for the pendency of the motion filed on December 9, 2020, of those 178 days, well over 70 are included in any determination of the Speedy Trial Act's time calculation.

The government filed responses in (ROA.165, 226) to motions by the defendant. That comports with the law- the length of delay in this case of over a year is attributed to the Government. From January 22, 2020, the date of indictment,

---

<sup>6</sup> The Government chose the word "automatic". *see* (ROA.214).

through the hearing on the motion to dismiss there are at least 228 of those 368 days that are not excludable. This is because the party requesting the ends of justice continuance has the burden to establish it is justified under the Speedy Trial Act. *United States v. Burrell*, 634 F.3d 284, 287 (5<sup>th</sup> Cir. 2011)(“the Government bears the burden of establishing the applicability of this exclusion as “the trial court [did not] independently recognize [] the need for such a delay” and the Government is “the party seeking to benefit from the delay.” *United States v. Bigler*, 810 F.2d 1317, 1323 (5<sup>th</sup> Cir. 1987). In fact, the government sought two continuances in response to the Motion to Dismiss alone. (ROA.190, 194).

The Government’s “automatic” continuances come from the Orders entered by the presiding judge. General Orders, like a district’s local rules, may not conflict with federal law, let alone the Constitution of the United States. *See* 18 U.S.C. § 2071(a)(“The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure.”) *Marshall v. Gates*, 44 F.3d 722, 724-25 (9<sup>th</sup> Cir. 1995)(noting that a districts local rules, though “laws of the United States” may not conflict with federal law); *see also Williams v. United States District Court*, 658 F2d 430, 435 (6<sup>th</sup> Cir. 1981)(A local rule is inconsistent with the federal rules and status if it alters those aspects of the litigation process which bear upon the ultimate outcome of the litigation, thereby frustrating

federal policies.) Thus, no court or judge, or chief judge, can grant an “automatic” extension of time under the Speedy Trial Act. Gordon’s matter was not complex nor complicated as shown by the initial setting that would have been a mere four (4) months after his arrest. None of the orders entered dealt with the facts or specifics of his case 20-cr-226. It is worth noting that the orders are not required to go through the same ‘Notice and Comment’ that other rules are required to go through under 28 U.S.C. § 2071(b).

Once again, it’s worth noting that the system moved on, in May of 2020 alone the United States filed 13 new criminal matters. See motion to supplement record

## **REASONS FOR GRANTING THE PETITION**

**Carl Gordon's trial after being delayed by the Government for four hundred and sixty-eight (468) days violated his right to a Speedy Trial under both the Sixth Amendment to the United States Constitution and 18 U.S.C. §3161 (Speedy Trial Act) harming him and resulting in a void conviction.**

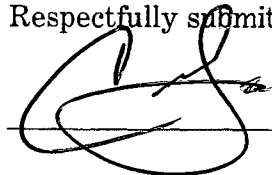
## CONCLUSION

As Clarence Darrow famously said, "You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free." Protecting the constitutional rights of everyone, even those convicted of sex offenses, is of the utmost importance for protecting our freedom. In *Roman Catholic Diocese*, 141 S.Ct. 63, 68 (2020) that Court said, "We may not shelter in place when the Constitution is under attack. Things never go well when we do." Here Gordon's right to a speedy trial was violated under both the Statute and the Constitution. This Court must recognize that, and reverse and render an acquittal for that violation or at the very least reverse and grant a dismissal without prejudice for that violation.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a horizontal line and a small flourish.

Date: 05/30/24