No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ANGEL LANDA-AREVALO

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 A WRIT OF CERTIORARI

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QUESTIONS PRESENTED.

Petitioner was first arraigned on three counts in a multidefendant drug distribution conspiracy on February 23, 2016. Trial did not commence until June 3, 2019. Petitioner did not oppose a motion to declare the case complex and to continue the case until May 8, 2017. His review of discovery resulted in the dismissal of one use of a communication facility count against him based on the government's misidentification of the caller. When co-defendants, however, on April 10, 2017 sought to extend the trial beyond May, 2017, Petitioner objected, declaring he would not "waive his speedy trial right." On May 9, 2017, fourteen months after his arraignment, a minimal period found to be presumptively prejudicial by the Tenth Circuit Court, Petitioner sought severance from his co-defendants and noted that "previous waivers under the Sixth Amendment had expired." In hearings held June 6, 2017, July 24, 2018, and September 20, 2017, he opposed continuance requests by others and reiterated his right to a speedy trial. On July 26, 2018, Petitioner's counsel renewed the motion to sever and "pursue his request for a speedy trial." On August 9, 2018, Petitioner's counsel again opposed a co-defendant's motion for a continuance. All of Petitioner's requests for protection under the Sixth Amendment's Speedy Trial Clause were denied, as the trial court culled all the other defendants from the case. Petitioner's trial did not commence until 39 months after his initial appearance, during which time Petitioner remained detained. The government's own psychologist from the Bureau of Prisons testified that Petitioner had an unresolved adjustment disorder that became aggravated by lack of medication through his prolonged detention and further expressed a need for an extended mental health examination to evaluate whether a traumatic head injury several years before his arrest and bizarre acts of perseveration that caused him to focus on irrelevant details and a breakup of communication with his trial counsel indicated a more severe form of mental illness. Was Petitioner's right to a speedy trial violated under the Sixth Amendment? Should the trial judge have ordered a mental health evaluation when urged to do so by both government and defense counsel who argued a bona fide doubt had been raised about Petitioner's competency to stand trial?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioner, Angel Landa-Arevalo, was a defendant in the district court and was the appellant in the Tenth Circuit. Mr. Landa-Arevalo is an individual. Thus, there are no disclosures to be made by him pursuant to Supreme Court Rule 29.6.

The Respondent is the United States of America.

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Angel Landa-Arevalo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals of the Tenth Circuit.

OPINIONS BELOW

The Tenth Circuit's controlling decision is reported at *United States v. Landa-Arevalo*, 104 F. 4th 1246 (10th Cir. 2024).

JURISDICTION

The Tenth Circuit entered its opinion on June 25, 2024, App., *infra,* 3-17. Mandate was issued in the case on July 17, 2024. This Court has jurisdiction under 28 U.S.C. Sect. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial…" The Fifth Amendment's Due Process Clause of the Constitution says to the federal government that no one shall be "deprived of life, liberty or property without due process of law."

STATEMENT OF THE CASE

Petitioner was arraigned on a three-count complaint in the United States Court for the District of Kansas on February 23, 2016 for conspiracy to distribute and possession with intent to distribute more than 50 grams of methamphetamine under 21 U.S.C. 846, 21 U.S.C. 841(a)(1) and 21 U.S.C. 841(b)(1)(A)(viii) in count one, possession with intent to distribute more than 50 grams of methamphetamine under 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A)(viii) and 18 U.S.C. 2 in count two, and with use of a communications device to facilitate an illegal drug transaction under 21 U.S.C. 843(b) in count three. On March 17, 2016, the government filed a twelve-count indictment against Petitioner and nine other defendants, where the same three counts in the complaint were again charged against the Petitioner (Volume I of the Record on Appeal at page 47). The government dismissed the communications count against Petitioner on September 14, 2017 (Supplemental Record on Appeal, Volume I at 53) after it acknowledged Petitioner had been wrongly identified as "Guero" in the underlying phone conversation (I:71). A five-day jury trial

started on June 3, 2019, where Petitioner was found guilty on the remaining conspiracy and distribution counts. On July 7, 2022, Petitioner received a 133-month prison sentence to be followed by 5 years of supervised release. A timely notice of appeal to the Tenth Circuit Court of Appeals followed.

STATEMENT OF FACTS

1. Petitioner arrived in the United States in 1991 at age 31 as a lawful permanent resident with a college degree in computers and information technology from his native country of Bolivia, where he had worked as a supervisor for a marketing and sales company (III:79, 101, 118). He worked in California as a certified nurse's assistant from 1996 through 2013 (III:101, 118). In 2013, however, he was involved in a serious automobile accident, where he suffered broken ribs, a broken hand, a collapsed lung, and head trauma that regularly caused him migraine headaches (III:101, 119). After the accident, he could no longer maintain work and became unemployed (III:102). His trial lawyer told the district court that Petitioner's inability to obtain even white collar work made her believe he had deteriorated mentally because of the

head trauma he sustained in the accident (III:202). "I knew he had been involved in a serious car accident that had not allowed him to go back to work and he had been an educated person," she testified. *Id.* Petitioner worked after the accident as a driver for various companies and as a "personal driver" (III:118). During his 17 years in the United States prior to his ongoing detention in this case, Petitioner had been to municipal court only twice for minor traffic or conduct infractions and had never been to jail at all (III:99-100).

2. From the outset following his arrest and arraignment, attorneys did not stay as his counsel. The first left after 77 days (Supp.I:34); the second after 71 days (Supp.I:37). "The court does not continue to appoint different attorneys if the reason is that you don't like what he's telling you," the district court told Petitioner. "Do you understand that?" His response was telling in that it showed his inability to communicate well. "I do, Your Honor, and I respect every professional as lawyers, and as many professions here. I respect, I do respect for everyone" (II:863). A

third attorney was appointed six months after his arraignment (I:8).

3. After two hearings in 2016, the case was declared complex at the end of 2016 (Supp.I:42). Petitioner's third attorney did not contest the motion (Supp.I:43). But when another attorney sought an extended continuance on April 10, 2017, Petitioner objected. "I have had opportunity to talk with Mr. Landa-Arevalo about the motion," the new attorney told the court. "He does object to any continuance at this time..and declines to waive his speedy trial right" (II:1298). The court noted no severance motion had been filed and, as a joined co-defendant under the Speedy Trial Act, the court said, "(T)he speedy trial time stopped from this day until the next court date." *Id.* The government interjected it would oppose any motion to sever (II:1299). The trial was continued to November 6, 2017.

4. After 14 months passed, which was the first period of time the Tenth Circuit had recognized could constitute "prejudicial delay," see *United States v. Abdur-Shakur,* 465 F.3d 458, 465 (10th Cir. 2006), Petitioner filed a motion to sever on May 9, 2017, and

noted "previous waivers under the Sixth Amendment and statute (had) expired" (I:57). Petitioner's motion addressed language in *Barker v. Wingo,* 407 U.S. 514, 530 (1972), which held that extended delays of trial foster "incarceration pretrial oppression" that can be highly prejudicial to a defendant. *Id.,* 532-533. Petitioner noted he had been in custody for 441 days and had declined to waive his speedy trial right. Petitioner's attorney noted that his client had driven a car from California to Kansas in which illegal drugs had been hidden by a passenger. This presented a "narrow question" about whether Petitioner knew the illegal drugs were in the car, an issue that should not require the four-week trial the government claimed was necessary for the multidefendant case. The government responded by reliance on the Speedy Trial Act's provision under 18 U.S.C. 3161(h)(6) that "speedy trial does not run separately as to each defendant." Petitioner's claim under *Barker v. Wingo* that held extended pre-trial incarceration of a defendant was oppressive was never addressed by the government.

5. At a hearing on the motion to sever held June 6, 2017, Petitioner argued three important interests were at stake: (1) protection from oppressive pretrial incarceration, (2) minimizing anxiety and concern of the accused and (3) limiting the possibility that the defense will be impaired (II:713-15). Petitioner's attorney noted several reasons why his client might be vulnerable: (1) he was deprived of contact with his children in California, (2) he was a native of Bolivia with limited understanding of the American judicial system, (3) he had never been in jail, (4) he had anxiety from having been falsely accused as "Guero" in the case for over a year. *Id.* Petitioner's attorney noted his client had "zealously pursued his speedy trial" and argued the Constitutional right was "significant." *Id.* The government's attorney responded his only concern was "not trying this case twice," which, he said, would be "the antithesis of judicial economy" (II:720). The district court similarly showed no concern about how delay could be oppressive to a defendant like Petitioner. The court only was concerned about its docket. "A conspiracy trial causes a presumption that co-conspirators charged together should be tried together," the court

stated. "A short delay," the court said, "to keep him on track with his other defendants" was not "sufficiently prejudicial" to justify severance (II:724). The district court's promise of a "short delay" came 16 months after Petitioner was first arraigned. Another 23 months passed before Petitioner was tried.

6. Not long after the district court denied the severance motion, the third attorney filed to withdraw (Supp.I:46). He cited a "communication breakdown" (II:870). At a subsequent hearing, the district court blamed the Petitioner. Petitioner responded, "It was not tried down" (II:877), meaning no trial had taken place. The court replied, "You can't keep getting new attorneys based on the same reason." *Id.*

7. On July 31, 2017, the fourth attorney, Melanie Morgan, was appointed to represent Petitioner. The previous attorney had filed a motion to join a *James* hearing. Morgan told the court, "Certainly, while I tend to join a co-defendant's motions, I'll determine whether or not filing is appropriate, and discuss that with my client" (II:881).

8. Morgan's representation to the court formed the basis for Petitioner's subsequent mental problems. The prior attorney may have informed Petitioner that filing any motion would toll any claim he might have to a speedy trial. He told Morgan he wanted no motions filed. Morgan told her client she would do whatever she thought best, which was the opposite of what she had told the district court only weeks before. On September 20, 2017, the court held a hearing on the *James* issue. "Your Honor," Petitioner said, "I'm not ready for the court taking this session….I want to take one of my rights" (II:887). The court asked, "Which right?" Petitioner responded, "It's – I think it's Sixth Amendment not to be afflicted by my own lawyer in order to take the responsibilities that I have never accepted." *Id.* Petitioner did not want to join the *James* hearing. *Id.* The district court then told Petitioner, "Have a seat." Morgan then told the court she would do whatever she wanted and thought best for her client, regardless of what he desired. "I believe it is *my* obligation as counsel to make that particular decision. It is *my* prerogative to pursue the motion" to join the *James* hearing, she said (III:906). Petitioner stood up.

"Your Honor, please, I beg you…" he said. "It's my life…what I'm trying to show my rights" (III:908). The district court let Morgan pursue the motion to join the *James* hearing. Nine days later, she filed a motion to suppress (III:17) without Petitioner's approval. The district court then used the filing of that motion under 18 U.S.C. 3161(h)(1)(D) to toll the Petitioner's speedy trial right an additional 292 days to July 17, 2018, at which time the court set a hearing and the motion to suppress was overruled (Supp.I:76).

9. After the hearing on the joinder to the *James* motion, Petitioner notified Morgan not to contact him any further. Morgan moved to withdraw (Supp.I:58), but the court refused her request. "I don't think we going to work together anymore," Petitioner told the court on October 10, 2017. "Clearly, she was against my opinion, against my…all my defense" (II:922-3). The court declined Morgan's request and placed the blame solely on Petitioner. "What the court has noticed is a pattern by you in causing these motions to be filed because of the breakdown in communication" (II:923-24). Eight days later, a co-defendant filed for yet another continuance. Morgan, who told the court her client

was not communicating with her, opposed the continuance for her client and asserted his "right to a speedy trial." The court told Petitioner his actions were "willful" (II:960). The court, without addressing Petitioner's Sixth Amendment claim, passed the trial another 10 months to August 13, 2018 (Supp.I:71). At the beginning of 2018, Morgan again moved to withdraw. Petitioner, she said, now refused all contact with her and sent back all her letters as "Refused." Morgan reiterated to the district court there was a "complete breakdown in communication." At a hearing held January 22, 2018, the court paused. "There's a point of this where I have to look after in some ways his interests" (II:976). But the pause was short. The court denied Morgan's motion. *Id.*

10. The impasse continued. At the hearing on her motion to suppress held July 17, 2018, Morgan again moved to withdraw, stating it had been 10 months since she communicated with her client. The district court again blamed Petitioner. "It's not about I have misconduct, no, Your Honor," Petitioner replied. "I'm look for – for help for everything, help, the Sixth Amendment, it's very clear on that" (II:999).

11. On July 26, 2018, Morgan renewed the motion to sever. (I:115). Petitioner had been in custody 885 days. "He continues to pursue his request for a speedy trial, a severance being the only way such right can be protected," she wrote (I:116). "The defendant is not free on bond and compounding the suffering attendant to any detention is the fact that he is half a continent away from loved ones and friends." *Id.* The court shortly after denied the motion to sever. "There's no unfair prejudice to defendant by the length of time he's been incarcerated," the court held (II:1079). Two weeks later, when yet another defendant sought still another continuance, the court continued the trial another 10 months to June 3, 2019 (II:1068). Petitioner's objection to the continuance was noted.

12. As the June, 2019 trial date approached, Morgan again asked to withdraw. "I think we are truly headed for a disaster," she told the district court (II:1985). She had no contact with her client since September 20, 2017, some 20 months. "I would be forced to litigate issues (at a trial) without consulting a client," she explained, and without having him have the ability to weigh in on

questions I have." *Id.* The district court once again paused for a moment. "There's merit in a number of things that you've said" (II:1129). But again, the court cited Petitioner's "pattern of conduct." Petitioner responded, "We don't have no more communication. When somebody lies in your face, you don't believe it anymore" (II:1132). Petitioner told the court about his car accident. "I was in a car accident when these things happened." *Id.* The court simply responded, "She's going to be in a difficult position" but "just for the record, your motion is denied" (II:1132, 1134).

13. Just prior to trial, the government sought to resolve Petitioner's case by a plea offer to a use of a communications facility count under 18 U.S.C. 843, where the maximum punishment was limited to four years. With credit for good time, Petitioner would face only an additional three months incarceration. The district court engaged a second lawyer, Angela Williams, to meet with Petitioner to convey the offer (III:143). But when Williams went to meet with Petitioner, she encountered an emotionally distraught defendant with whom communication was

impossible. "He kept talking over me as I said the elements of the plea," Williams later told the court (III:149). "He was very agitated and kept saying, 'I can't do this behind the court, and the judge sent you to do this.'" *Id.* Williams said, "(A)t some point, then he just stopped talking, and started looking at the floor, and just kept saying, 'Good day, good day'" (III:149).

14. After Williams' attempt to convey the plea offer failed, both defense attorneys, Morgan and Williams, as well as the government's attorney requested the district court to conduct a competency hearing pursuant to 18 U.S.C. 4241. "We would have Mr. Arevalo evaluated," Morgan told the district court (III:127). The government's attorney added, "The question is, is he being rational" (III:128). When the court asked Petitioner about Williams' efforts to convey a deal, Petitioner responded, "(I)t was kind a lie, it was lying, it's very clear that's what I hear from Ms. Williams, that you been sending to speak out with me directly from you…I don't want to lie" (III:131). "Judge," Williams told the court, "I think it would be the prong about the impaired ability, and the nature and consequences about the trial, and not just the

trial, but the plea offer" (III:133). Williams continued: "He was prevented from hearing what I had to say by his own emotional state…and was not giving the plea agreement enough consideration, and maybe didn't understand what the plea agreement was." *Id.* The government's attorney then added, "We don't know what his mental state is, because no one's been able to talk to him for 20 months" (III:136). He added, "When he's been in court, it's been strange and sometimes his answers don't make sense to me." *Id.* Then the government's attorney stated, "It's the government's position that the defendant should be evaluated" (III:137). Morgan then added, "I have had no real ability to assess where he's been to see whether or not he had deteriorated as a result of being incarcerated, removed from his family for an extended period of time. We had an attorney (Williams) who had no connection to me whatsoever, and she was concerned." *Id.* "It made me believe something was not right." *Id.*

15. Nothing the three attorneys said to the district court had any impact at all. The judge was unyielding. "There's been a pattern of behavior and conduct from defendant from the very

beginning of the case that has interfered with counsel's ability to represent him," the court said (III:153). This was not "a mental disease or defect," the court opined. "What the court has found to be reasons for evaluations are evidence (of)…voices being said, or they're making comments that are clearer on their face, they're truly not based on reality" (III:153). The district court would not have Petitioner mentally evaluated. *Id.*

16. The trial began on June 3, 2019 and was, indeed, a disaster for Petitioner. When the jury panel was given their oath, Petitioner stood up and blurted out, "Before you start, I have to let you know to the grand jury that I don't have no defense counsel since September with the misconduct on Mrs. Melanie Morgan…" (II:23). The district court ignored Petitioner and told the clerk to call the names. Later, when persons at the defense table were introduced, Petitioner again stood up. "My name is Angel Landa-Arevalo," he said. "This is my first time seeing this situation. And I object to Mrs. Morgan to my counsel since September 19 to all the false evidence, and you can't be hated to me," he continued. "I'm not going to agree to that" (II:45). Once the jury was passed

for cause, Petitioner stood up again. "Your Honor," he said. "Hold on," the court replied. "Sit down," the court shouted at Petitioner. But the Petitioner continued, "I want to explain to you…." The court shouted louder now: "Sit down. Sit down. Sit down. Sit down" (II:136). The court called Morgan to the bench and told her he was not going "to have these types of behaviors" (II:137). Morgan replied, "I think he wants to be able to speak directly to this jury, and I am hindering that ability" (II:138). She then added, "I don't think he understands the process about how the system actually works and what happens in a jury trial." *Id.* Morgan then told the judge, "I'm very concerned about the direction this is going" (II:139). When the jury took a recess, the court told Petitioner he had the option to gag him in front of the jurors. Petitioner responded, "Your Honor, I hope for one second to be on my side" (II:154).

17. The government's case had problems. A case agent insisted he had seen Petitioner and the car's passenger standing on both sides of the car after it parked in a garage of the principal co-defendant in Kansas City, and that the bundles of

methamphetamine were visible lying in the back portion of the car through the window. But the garage itself was tiny and it would not have been possible for one, much less two people, to stand next to the car inside the garage (II:455). But when it came time for Petitioner to explain to the jury whether he realized he had been transporting illegal drugs from California to Kansas City, he refused to testify. "Since I don't have no defense counsel at my side," he told the court, "I won't be able to say anything to anybody" (II:644). "I just want to keep protected the Fifth Amendment. Thank you, Your Honor," he added. *Id.*

18. Morgan, in a competency hearing held before a different judge years later, testified, "It was clear to me that he really did not understand due process and how various aspects of the case sort of worked each other out" (III:187). "I began believing he was parroting information" she said," which resulted in "him just sort of masking, you know, his impairment" (III:171). "He was able to parrot certain ideas," she said, "certain concepts like, 'I want a lawyer'… 'the Sixth Amendment' without really understanding how a lawyer works to that person's assistance" (III:189). "He

didn't understand he didn't have the ability just to speak in a free-for-all in there," she continued. "This reflected to me a real disconnect" (III:173). Petitioner would move away from her whenever she tried to communicate with him during the trial. "There was like a pulling away like almost wincing or a cringing that I was physically harming him to come near him or lay hands on him," Morgan testified (III:173-74). Petitioner would scoot down to the end of the table to be removed from her as far as possible (III:169). "I knew he was not hearing what was said and processing," she said (III:171). "(H)e didn't want me as his lawyer without a real appreciation that we were at a place in the trial where he could not make those blurt outs" (III:172). "It was much worse than the transcript revealed," she said. "I think it caught everyone off guard" (III:201). "I believe there was a version of what transpired that was different from the narrative the agents gave," Morgan stressed (III:176). "I felt it was important for my client to give that narrative," she added. *Id.* "We were not able to have that discussion" (III:177).

19. Morgan was concerned the judge's threat to gag Petitioner might have been a factor in Petitioner's refusal to testify (III:177). Morgan was asked whether Petitioner was able to rationally assist her and take counsel from her during the criminal proceedings? "I don't believe he was able to," she answered, "and I believe it was due either to injury or illness" (III:178). After Petitioner was incorrectly named as 'Guero' in the initial indictment, even though that count was later dismissed, "there was never an ability to move on," Morgan believed (III:188). "He was always fixated on that part of the case," she said. *Id.* "It was clear no decision-making process had actually occurred in his brain," she added. "We had a plea deal that he had already served most of the time on – typically there are people who just want a trial but they can articulate why. That wasn't the case," Morgan concluded (III:203).

20. After Petitioner was convicted in the trial, the trial judge retired from the bench and a new judge replaced him. Morgan was replaced by yet another attorney. The new trial judge permitted a short turnaround mental evaluation under 18 U.S.C. 4247(b) of Petitioner that commenced in February, 2021, some 20

months after the trial. The psychologist, Dr. Alicia Gilbert, affiliated with the Bureau of Prisons, ultimately provided testimony that indicated Petitioner might have serious mental issues that could have affected his ability to work with his counsel and understand his trial. Dr. Gilbert testified before the successor district court judge that Petitioner "suffered from an unresolved adjustment disorder aggravated by five years of detention" for which he had received no medication (III:121). "Since Mr. Landa's situation has not been resolved," she wrote, "he continues to display marked anxiety and maladaptive behavior in social, occupational and other areas of functioning such as his legal proceedings," she said. *Id.* "He seems to focus on irrelevant and unimportant details which keep him stuck" (III:120), a trait called "perseveration" (III:122). The Petitioner was unable to move on from it without significant conversation, Dr. Gilbert noted (III:120). She pointed out Petitioner was "quick to jump to conclusions" (III:119) and used an example where Petitioner accused her of "lying to him about whether or not he was from Kansas." *Id.* Dr. Gilbert had to spend substantial time with him

to convince him to deal with her at the beginning of her evaluation. *Id.*

21. A major concern Dr. Gilbert expressed about Petitioner's mental state was the car accident that had preceded his alleged crimes. Petitioner had told the district court prior to trial about the car accident and how he had been "confused" after it occurred (II:1152). A traumatic head injury "can have consequences such as not processing information correctly, misinterpreting events, seeing things, impulsive behavior and just not understanding things correctly…at all," Dr. Gilbert testified. Dr. Gilbert asked the successor judge for a four-month evaluation to provide Petitioner with neurological testing and consultation with a neuropsychologist, something she did not have the resources to do in her short turnaround exam authorized by the district court (I:357-358). "Would you like to have spent more time with him to determine whether he had a severe mental illness?" Dr. Gilbert was asked. "Absolutely," she answered (I:364). Dr. Gilbert was asked, "The existence of traumatic head injury…could impact a subject's ability to cooperate with their attorney or understand the

proceedings, right?" She answered, "Absolutely, that's why it's one of the prongs" (I:368). But the successor judge denied any more comprehensive evaluation than the "turnaround" period initially allotted that would have made possible a proper neurological evaluation of his head injury (Supp.II:11).

22. Dr. Gilbert was also asked about Petitioner's perseveration personality trait, his paranoid thinking, suspiciousness, distrustfulness and whether they could also exist with respect to a more severe form of mental illness. "Absolutely," she replied (I:371). She needed more time to do a proper evaluation. "I couldn't fully evaluate his competency the way I would normally do it," she conceded. "The evidence he was competent," she said, "outweighed the evidence he was not." But the four-month evaluation conducted by a larger team of experts would be necessary to conduct the type of thorough evaluation Petitioner required (I:357-58).

23. The government at the competency hearing stated it would not oppose such an extended evaluation. "I think (there) are unavoidable potential deficiencies in this evaluation," the

government's attorney stated. "I think this defendant is bizarre," he added. "(W)hether it's a legal strategy or a medical defect I think has not been answered by this report despite the best efforts of Dr. Gilbert" (I:379-380). "A more fulsome evaluation could be made with further evaluation," the government concluded.

24. Despite a new defense attorney added to the two defense attorneys, Morgan and Williams, prior to the trial and the government's attorney all in agreement with the government psychologist that Petitioner should be provided a comprehensive extended mental evaluation, the district court refused and ruled Petitioner had been competent to stand trial some 23 months earlier (I:462). Like his predecessor, the successor judge concluded Petitioner's "behavior amounts only to obstructionism." *Id.* The outbursts at trial and other bizarre behavior, the successor judge stated, did not come close to the defendant's behavior in *United States v. Williams,* 113 F.3d 1155 (10th Cir. 1997). *Id.* Nevertheless, after he sentenced Petitioner to 133 months following his conviction, the successor judge also stated, "The record adequately warrants a condition for a mental health

evaluation" upon Petitioner's release, based on "concerns expressed by the psychologist who evaluated Mr. Landa-Arevalo under the Court order" (II:829).

REASON FOR GRANTING THE WRIT

THE TENTH CIRCUIT COURT ERRED IN HOLDING THAT PETITIONER'S SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL WAS NOT VIOLATED WHEN PETITIONER SPENT 39 MONTHS IN OPPRESSIVE PRETRIAL INCARCERATION THAT BROUGHT ABOUT A DETERIORATING AND UNTREATED MENTAL HEALTH DISORDER, EVEN AFTER PETITIONER'S COUNSEL SOUGHT REPEATEDLY TO INVOKE HIS SPEEDY TRIAL RIGHT AND THE DISTRICT COURT'S SOLE JUSTIFICATION FOR DENYING PETITIONER A TRIAL WAS A PREOCCUPATION WITH PRESERVING A MULTIDEFENDANT CONSPIRACY CASE FOR TRIAL

The Tenth Circuit appropriately addressed the longstanding analysis provided by this Court for a claim under the Speedy Trial Clause of the Sixth Amendment under *Doggett v. United States,* 505 U.S. 647, 651-52 (1992) and *Barker v. Wingo,* 407 U.S. 514, 530-31 (1972). Four factors to consider are (1) the length of the delay, and whether such delay is uncommonly long; (2) the reason for the delay, and whether the government or the defendant is more to blame; (3) whether, in due course, the defendant asserted his right to a speedy trial; and (4) whether the defendant suffered prejudice as a result. *Barker,* 407 U.S. at 530. Petitioner believes

that the Tenth Circuit's analysis finding in favor of the government on the last three factors was error.

Length of the Delay. The length of the delay factor was never contested by the government. Trial convened on June 3, 2019 more than 3 years and 3 months after Petitioner's February 23, 2016 arraignment. *Doggett* holds that "post accusation delay" has been held "presumptively prejudicial as it approaches a year." 505 U.S. at 652, n. 1. The delay in Petitioner's case easily exceeds this benchmark.

The reasons for the delay, and whether the government or the defendant is more to blame. The Tenth Circuit initially blames the Petitioner for the first fourteen months of the delay, because he agreed to the delays brought about by the complex case and his need to review the government's voluminous discovery materials. But such an initial delay in a complex case should not necessarily be attributed to a defendant. In Petitioner's case, review of the government's discovery materials revealed that Petitioner had been wrongly accused by the government in one of his three charged counts, where the government accused him of being

"Guero." The opportunity to review the discovery served the government's stated claim of "judicial economy" and actually shortened the trial. This initial delay, particularly in a complex case, is what this Court in *Doggett* described as "ordinary." *Id.*, 505 U.S. at 652.

The reasons for the delay beyond this initial one year (or 14 months in the Tenth Circuit) is another matter. The Petitioner after 14 months sought a severance. He did not need to be joined in a four-week trial of all the other codefendants. Whether he knew illegal drugs were in the car he came to Kansas in was a "narrow question." The government wanted to try all of the defendants together, but this preference needed to be weighed against the Petitioner's declining mental state brought about by his oppressive, prolonged pretrial detention. The district court, moreover, which is deemed a part of the government, additionally bears responsibility for allowing defendant after defendant to receive continuances that were unnecessary if it had required initial counsel to remain in the case, even in a consultation capacity. The responsibility for "overcrowded courts…must rest

with the government rather than the defendant." *Barker v. Wingo,* 407 U.S. at 531. In the multi-year period leading up to trial, the district court never considered any factor such as Petitioner's oppressive detention in its decision to prolong the case and grant seemingly endless requests for continuances by other charged conspirators. None of the cases cited by the Tenth Circuit – *United States v. Keith,* 61 F.4th 839, 853 (10th Cir. 2023) (23 month delay; earlier severance offered by government), *United States v. Markheim,* 770 F.3d 1312, 1326 (10th Cir. 2014) (22 month delay) or *United States v. Tranakos,* 911 F.2d 1422, 1428 (10th Cir. 1990) (24 month delay following reversal of dismissal mandate) – came close to the 39 month delay in Petitioner's case nor involved the verified mental health deterioration of a defendant like Petitioner experienced during his long term incarceration awaiting trial.

Assertion of Right. No purpose would have been served to assert Petitioner's speedy trial rights during the initial year, because *Doggett* itself requires a period of delay that is at least presumptively prejudicial. 505 U.S. at 652 n.1. The Tenth Circuit

analysis that a defendant who "sat on his hands" during that initial period forfeits his speedy trial claim, App., *infra,* 16, would mean that any defendant who failed to raise a premature speedy trial claim within this first year would effectively forfeit such a claim no matter how long a court delayed the trial into the presumptively prejudicial period. This Court has held otherwise. "We reject the rule that a defendant who fails to demand a speedy trial forever waives his right." *Barker v. Wingo,* 407 U.S. 528. In Petitioner's case, his frequent claims for a speedy trial over the remaining 26 months from the date of his first motion to sever exhibited a strong desire to assert the right.

Prejudice. The Tenth Circuit decision curiously ignores Dr. Gilbert's testimony that Petitioner suffered from an unresolved adjustment disorder that became aggravated by lack of medication throughout his prolonged detention (III:121). His isolation from his family in California exacerbated his fragile condition (II: 713-715, I:116), another factor of oppression ignored by the Tenth Circuit in its opinion. Dr. Gilbert explained in great detail how Petitioner's condition impaired his ability to consult with his

counsel and strategize about his case, yet her request for a more comprehensive evaluation was denied. "There's a complete and utter breakdown," Melanie Morgan told the court, yet the district court did nothing but improperly blame Petitioner. Dr. Gilbert's testimony showed that the district court was wrong.

"The seriousness of post-accusation delay worsens when the wait is accompanied by pretrial incarceration." *Barker v. Wingo,* 407 U.S. at 531-33. The Court should address these important considerations raised throughout Petitioner's trial and provide guidance as to whether multidefendant drug cases can ever result in a violation of the Speedy Trial Clause of the Sixth Amendment.

REASON FOR GRANTING THE WRIT

THE TENTH CIRCUIT COURT FAILED TO CONSIDER WHETHER, BASED ON DR. GILBERT'S TESTIMONY, THE DISTRICT COURT COMMITTED AN ABUSE OF DISCRETION IN ITS FAILURE TO PROVIDE PETITIONER A COMPREHENSIVE MENTAL HEALTH EXAM TO DETERMINE WHETHER HE HAD BEEN COMPETENT TO STAND TRIAL

This Court has held that the "criminal trial of an incompetent person violates due process." *Medina v. California,* 505 U.S. 437, 453 (1992). "A person whose mental condition is such that he lacks the capacity to understand the nature and object of the

proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Drope v. Missouri,* 400 U.S. 162, 172 (1975). A trier of fact must consider "whether (a defendant) has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding of the proceedings against him." *Dusky v. United States,* 362 U.S. 402, 402 (1960). That a defendant can recite the charges against him, list witnesses and use legal terminology are insufficient to demonstrate he had a rational, as well as factual, understanding of the proceedings. *United States v. Williams,* 113 F.3d 1155, 1160 (10th Cir. 1997). See *Pate v. Robinson,* 383 U.S. 375 (1966) (colloquies with the trial judge held insufficient to avoid a competency inquiry).

The Tenth Circuit Court sought to side-step the issue whether the trial judge's refusal to provide Petitioner a competency exam was proper by claiming Petitioner's appellate counsel had waived the issue by not contesting the successor judge's order that an extended comprehensive examination post-trial, or indeed any examination by the time of trial, had not been necessary to

evaluate Petitioner's competency at trial. App., *infra,* 11. Waiver, however, is the "intentional relinquishment or abandonment of a known right." *United States v. Olano,* 507 U.S. 725, 733 (1993), an act Petitioner's counsel certainly never did. The Petitioner's opening brief was replete with claims the trial judge had committed both procedural and substantive error in not providing Petitioner a mental health evaluation, App., *infra,* 19. The opening brief attached the order (I:462) finding the Petitioner competent to stand trial and contested the successor district judge's analysis, App., *infra,* 20. It further set out the legal cases and analysis to explain why a competency evaluation should have been conducted prior to trial, *id.,* at App.. *infra,* 21. Indeed, in Petitioner's reply brief, App. *infra,* 29, Petitioner argued that if any waiver applied to a party to argue that the trial court had erred in failing to have Petitioner comprehensively evaluated, it should have been the government that waived the issue. Government's counsel argued, prior to trial, that a mental health exam should be conducted, and, after trial, that "a more fulsome"

mental health examination of Petitioner should have been conducted by a four-month extended mental health evaluation.

Dr. Gilbert's testimony easily established reasons why a more comprehensive mental health examination should have been conducted. Petitioner had an adjustment disorder that had gone untreated for over five years and that had become more aggravated during that time. Such a disorder could affect Petitioner's ability to interact with his trial counsel (III:121-23). Yet the district court judge had no idea Petitioner had such a mental health disorder, and instead placed all the blame on the Petitioner for his lack of communication with his legal counsel. The trial judge knew Petitioner had suffered a traumatic head injury that had caused Petitioner "confusion" (II:1152). But the situation raised no concern for the trial judge, despite similar traumatic head injuries sustained by defendants like *Pate* in this Court's competency cases. 386 U.S. at 378. The trial judge stated and apparently believed that competency issues only arose when defendants "heard voices." He turned his head prior to trial on two highly experienced defense lawyers and the prosecutor, who

tried to tell him mental health issues could be more complex and that the Petitioner needed to be examined.

Finally, Dr. Gilbert discussed Petitioner's perseveration, where a person gets stuck on an issue and can't move on. Melanie Morgan talked about how Petitioner had gotten stuck on being mistakenly charged as "Guero," even after the charge had been dismissed. Dr. Gilbert told the district court she needed a more comprehensive evaluation to determine whether such an issue and others like it had been a factor affecting his competency to stand trial. The successor district court judge denied that review, which left the Tenth Circuit with Dr. Gilbert's initial impression reached at the short turnaround exam that Petitioner was more likely than not competent. But, based on Dr. Gilbert's testimony, there had been "created sufficient doubt of (Petitioner's) competence to stand trial to require further inquiry on the question." See *Drope,* 420 U.S. at 180. This Court should examine the wisdom of the Tenth Circuit decision to rely only on Dr. Gilbert's initial impression in light of her credible concerns that a more

comprehensive, extended mental health examination was required to address the question of Petitioner's trial competency.

CONCLUSION

For the reasons set forth above, Petitioner requests this Court to grant certiorari on the question submitted.

Respectfully submitted,

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