No. _____

IN THE
Supreme Court of the United States

ROBERT ANDREW WOLTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Speedy Trial Act provides that a criminal defendant's trial shall commence within 70 days from the filing of the information or indictment or from the date the defendant has appeared before a judicial officer of the court in which the charge is pending. 18 U.S.C. § 3161(c)(1).

Certain periods of delay are excluded from the 70-day clock. 18 U.S.C. § 3161(h). On the one hand, "delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant" is excluded from the 70-day clock. 18 U.S.C. § 3161(h)(1)(A). On the other hand, the lapse of more than 10 days of transportation time between the date of an order for transportation to and from a place of examination or hospitalization and the defendant's arrival at the destination are presumed to be unreasonable. 18 U.S.C. § 3161(h)(1)(F).

The question presented is: when a criminal defendant is transported to another facility to undergo a competency evaluation, does the time between the date of the order for transportation and the defendant's arrival at the place of examination (less 10 days) count toward the 70-day speedy trial clock under 18 U.S.C. § 3161(h)(1)(F) or is this time excluded from the running of the speedy trial clock as "delay resulting from any proceeding, including any examinations, to determine the mental competency" of the defendant under § 3161(h)(1)(A)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

United States v. Robert Andrew Wolter, No. 1:19-cr-00048, United States District Court for the District of North Dakota. Judgment entered April 11, 2023.

United States v. Robert Andrew Wolter, No. 23-1848, United States Court of Appeals for the Eighth Circuit. Judgment entered August 13, 2024.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Materials

PETITION FOR A WRIT OF CERTIORARI

Robert Andrew Wolter respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-11a) is reported at 112 F.4th 567 (8th Cir. 2024). The district court's relevant ruling is unpublished.

JURISDICTION

The court of appeals entered judgment on August 13, 2024. App. 20a. Wolter received an extension of time to file a petition for rehearing. The court of appeals denied Wolter's timely petition for rehearing *en banc* on October 9, 2024. App. 19a. On January 3, 2025, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including February 21, 2025. This petition is timely filed under Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 3161(h) provides:

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to--

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

. . .

(F) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

. . .

INTRODUCTION

The Speedy Trial Act provides that a criminal defendant's trial shall commence within 70 days from the filing of the information or indictment or from the date the defendant has appeared before a judicial officer of the court in which the charge is pending. 18 U.S.C. § 3161(c)(1). Certain periods of delay are excluded from the 70-day clock. 18 U.S.C. § 3161(h). On the one hand, "delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant" is excluded from the 70-day clock. 18 U.S.C. § 3161(h)(1)(A). On the other hand, the lapse of more than 10 days of transportation time between the date of an order for transportation to and from a place of examination or hospitalization and the defendant's arrival at the destination are presumed to be unreasonable. 18 U.S.C. § 3161(h)(1)(F). The interaction of these two provisions has divided the courts of appeals.

This petition presents an important question of federal law that can only be settled by this Court: does the time between the date of an order for transportation for a competency evaluation and the defendant's arrival at the place of examination (less the 10 days allowed under the statute) count toward the 70-day speedy trial clock under 18 U.S.C. § 3161(h)(1)(F) or is this time excluded from the running of the speedy trial clock as "delay resulting from any proceeding, including any examinations, to determine the mental competency" of the defendant under § 3161(h)(1)(A).

This Court has never addressed this question directly and there is a clear and growing split of authority among the courts of appeals. The Second Circuit excludes the entire competency evaluation period, including travel delays, from the running of the 70-day limitation under 18 U.S.C. § 3161(h)(1)(A). *See United States v. Vasquez*, 918 F.2d 329, 333 (2d Cir. 1990).[1] In contrast, the majority of the courts of appeals to consider this issue calculate the excess travel period from the date of the order requiring travel until the defendant's arrival at the evaluation facility, less ten days allowed by 18 U.S.C. § 3161(h)(1)(F). *See United States v. Noone*, 913 F.2d 20, 25 n.5 (1st Cir. 1990); *United States v. Williams*, 917 F.3d 195, 202 (3d Cir. 2019); *United States v. Castle*, 906 F.2d 134, 137 (5th Cir. 1990); *United States v. Tinklenberg*, 579 F.3d 589, 596-97 (6th Cir. 2009), *aff'd on other grounds*, 563 U.S. 647 (2011) ("*Tinklenberg* I").

Here, the Eighth Circuit added a new fracture to this split. It held that some periods of time after an order is entered count against the 70-day speedy trial clock under the excess travel period of 18 U.S.C. § 3161(h)(1)(F). However, it also determined that other periods of delay, after travel has started but before arrival at the destination, might be excluded from the 70-day limitation as "proceedings" time under 18 U.S.C. § 3161(h)(1)(A).

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[1] 18 U.S.C. § 3161(h)(1)'s subsections were renumbered by removal of two provisions in October 2008. Judicial Administration and Technical Amendments Act of 2008, Pub. L. No. 110-406, § 13, Oct. 13, 2008, 122 Stat. 4294 (2008). As a result of that revision, subsection "§ 3161(h)(1)(H)," referred to in *Vasquez,* became "§ 3161 (h)(1)(F)." Wolter will refer to this provision as "§ 3161(h)(1)(F)" throughout this document, to maintain consistent identification of the law.

This Court should grant certiorari and resolve this important and recurring issue to ensure uniformity in the application of the Speedy Trial Act.

STATEMENT OF THE CASE

This appeal arises out of Wolter's conviction for bank robbery under 18 U.S.C. § 2113(a). Dist. Ct. Dkt. 2; Dist. Ct. Dkt. 170.[2] In April 2019, Wolter was indicted on a single count of bank robbery. Dist. Ct. Dkt. 2. Wolter sought a mental health evaluation regarding his competency. Dist. Ct. Dkt. 50; Dist. Ct. Dkt. 51. After that request was granted and an order entered, Dist. Ct. Dkt. 53, the government requested amendments to the order to allow Wolter to be taken to a different type of facility. Dist. Ct. Dkt. 56. The government's request was granted in an Amended Order, dated May 18, 2021. Dist. Ct. Dkt. 58. Wolter was transported from North Dakota and held in Oklahoma, pursuant to this order. On June 17, 2021, he was transported to a facility in San Bernardino, California and held there until September 10, 2021. App. 6a. Wolter "arrived at MDC Los Angeles on September 10, 2021," the place of his evaluation. Dist. Ct. Dkt. 66-1, at 4.

Upon his return to North Dakota, Wolter, then proceeding *pro se,* moved to dismiss the case for violation of the Speedy Trial Act. Dist. Ct. Dkt. 110. He argued that this travel period exceeded the time allowed by the act:

> Wolter contends the *five weeks in Oklahoma* on two transport visits *to and from Los Angeles, California* during this time should be non-excludable. Wolter also contends the *nearly four months* in West Valley Detention Center [in San Bernardino, California] just sitting and

[2] All citations to "Dist. Ct. Dkt." are to the docket in *United States v. Wolter*, No. 1:19-cr-00048 (D.N.D.).

> waiting for space to open up in M.D.C.L.A. only two hours away are also non-excludable.

Dist. Ct. Dkt., at 13, ¶ 21 (emphasis added). In response, the government argued the *entire* period of Wolter's competency proceedings "tolled" the running of the 70-day limitation. Dist. Ct. Dkt. 116, at 12-13 (citing *United States v. McGhee*, 532 F.3d 733, 737 (8th Cir. 2008)). The district court agreed with the government and did not consider any of the transportation period against the Speedy Trial Act's 70-day limitation. Dist. Ct. Dkt. 138, at 3-4.

After his conviction and sentencing, Wolter appealed. The Eighth Circuit agreed with Wolter, in part, but affirmed the result reached by the district court. App. 5a-6a (majority opinion). The court concluded that the time Wolter spent in Oklahoma should be counted toward the 70-day limit, however, the time in San Bernardino should not. *Id.* The court reasoned that the San Bernardino period was a "proceeding . . . to determine the mental competency [ ] of the defendant," under § 3161(h)(1)(A) and its earlier decision in *McGhee*. *Id.* at 6a. The case turned on whether the three-month period Wolter spent in the detention center in San Bernadino, California was excludable under § 3161(h)(1)(A) and (F). *Id.* at 9a-10a (Stras, J., concurring in part and dissenting in part).

Judge Stras, in dissent, explained that Wolter's Speedy Trial Act argument was correct; a violation had occurred. App. 9a-11a. In his view, the time Wolter had spent in San Bernardino should be considered excess travel under § 3161(h)(1)(F), because it was no different from the time Wolter had spent in Oklahoma. App. 10a-11a. "The [Eighth Circuit's majority] offers no real explanation for treating the two

stops differently. . . . [G]etting close is not good enough: the Speedy Trial Act required [Wolter] to be '*at* the destination,' not *near* it." App. 10a. (quoting 18 U.S.C. § 3161(h)(1)(F)). Judge Stras recognized that Wolter's case was highly unusual, "[s]uccessful Speedy Trial Act claims are few and far between. *Until today*, I had never seen one." App. 9a (emphasis added). The court of appeals had jurisdiction under 28 U.S.C. § 1291.

Wolter timely filed a petition for rehearing en banc. The court of appeals denied his petition in a summary order. App. 19a. This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

The Speedy Trial Act, 18 U.S.C. § 3161 *et. seq.*, ("STA") is an effort by Congress to give " 'effect to a Federal defendant's right to speedy trial under the Sixth Amendment and acknowledged the danger to society represented by accused persons on bail for prolonged periods of time.' " *United States v. Rojas-Contreras*, 474 U.S. 231, 238 (1985) (Blackmun, J. concurring) (quoting H.R.Rep. No. 96-390, p. 3 (1979), U.S.Code Cong. & Admin.News 1979, pp. 805, 807). It provides a 70-day period in which trial must commence or the case must be dismissed. 18 U.S.C. § 3161(c)(1). The STA applies to felony and many misdemeanor cases. *See* 18 U.S.C. § 3172(2). Therefore, the question raised here seeks to resolve an important matter of federal law where the courts of appeals have reached conflicting decisions. The Court should address and resolve the courts of appeals' conflicting interpretations of excess travel time for competency evaluations under the STA.

The STA provides several exclusions from the running of the 70-day limitation. One of these exclusions is "delay resulting from any proceeding, including any examinations, to determine the mental competency . . . of the defendant." 18 U.S.C. § 3161(h)(1)(A). Further, the STA provides that, "delay resulting from transportation of and defendant . . . to and from places of examination or hospitalization" are also excluded from the 70-day limitation. 18 U.S.C. § 3161(h)(1)(F). However, there is a condition of the travel exception: "any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable." *Id.* In the context of the statute, the term "arrival at the destination" means arrival at the specific "place[ ] of examination or hospitalization," not a greater metropolitan area, vicinity, or other place of detention. *Id.*

The interests protected by the STA echo those protected by the Sixth Amendment right to a speedy trial. Application of the STA is a recurrent issue faced by district courts across the country. Given the prevalence and importance of these issues, and the rights they are designed to protect, this Court's clear guidance is needed. The Court should grant the petition for a writ of certiorari to resolve the divide among the courts of appeals.

I. The courts of appeals are divided on the question presented.

A. The Second Circuit excludes the entire time period for competency evaluations, including travel, from the running of the STA clock under 18 U.S.C. § 3161(h)(1)(A).

On one side of the split, the Second Circuit stands alone in its conclusion that all time from the date of a competency evaluation *order* until the completion of a competency evaluation *hearing* is excludable under 18 U.S.C. § 3161(h)(1)(A). *See Vasquez*, 918 F.2d at 333 (quoting *Henderson v. United States*, 476 U.S. 321, 330 (1986) (excluding "all time between the filing of a motion and the conclusion of the hearing on that motion, whether or not a delay in holding that hearing is 'reasonably necessary' ")). The Second Circuit explained "[s]ince the delays here complained of by Vasquez arose from proceedings to determine his competency and were prior to the conclusion of the hearing thereon, they must be excluded from the calculation of the speedy trial clock whether or not they are reasonable." *Id.*

In other words, the Second Circuit has determined that excess travel time under 18 U.S.C. § 3161(h)(1)(F) is not considered at all, because the entire competency evaluation period is excluded from the running of the 70-day limitation, as a proceeding under 18 U.S.C. § 3161(h)(1)(A), regardless of the unreasonableness of any delay. *Id.*

B. The First, Third, Fifth, and Sixth Circuits calculate excess travel periods for competency evaluations under 18 U.S.C. § 3161(h)(1)(F).

On the other side of the split, the First, Third, Fifth, and Sixth Circuits reject *Vasquez*'s approach to 18 U.S.C. § 3161(h)(1)(A), finding that its rationale renders

the excess transportation exception of 18 U.S.C. § 3161(h)(1)(F) superfluous. *See Noone*, 913 F.2d at 25, n.5 (finding that unlimited excluded time for transporting defendants to competency evaluation "would render mere surplusage the specific reference in [18 U.S.C. § 3161(h)(1)(F)] to transportation 'to and from places of examination or hospitalization' ") (cleaned up); *Williams*, 917 F.3d at 202 ("We . . . hold that periods of unreasonable delay of more than ten days in the transport of a defendant *to the site of a psychological examination* conducted in the course of a proceeding to determine a defendant's mental competency are non-excludable . . . under the Speedy Trial Act."(emphasis added)); *Castle*, 906 F.2d at 137 ("[T]he entire time between the order for psychiatric examination and the date of the competency hearing cannot be excluded, for under § 3161(h)(1)[(F)] any time over 10 days spent transporting the defendant to his psychiatric examination is considered unreasonable and should not be excluded."); *Tinklenberg* I, 579 F.3d at 596 "Reading § 3161(h)(1)(A) to allow unlimited time for transporting a defendant *to a place of examination*, as the Second Circuit did in *Vasquez*, would create an internal conflict in the statute, since § 3161(h)(1)(F) expressly limits the reasonableness of the transportation period to ten days." (emphasis added)). In other words, these courts "count" the excess travel periods against the 70-day limitation, under 18 U.S.C. § 3161(h)(1)(F), as an "exception to the exception" of 18 U.S.C. § 3161(h)(1)(A)'s "proceedings" exclusion.

This Court considered and applied the excess travel provision of the STA, when it considered the Sixth Circuit's *Tinklenberg* I decision on appeal. *See*

United States v. Tinklenberg, 563 U.S. 647, 660-63 (2011) ("*Tinklenberg* II"). There, this Court examined how the "excess travel" period was determined under Federal Rule of Criminal Procedure 45(a), as it existed prior to its modification in 2005. *Id.* Ultimately, the Court affirmed dismissal of the indictment for a violation of the 70-day limitation, when the excess travel period was correctly calculated and applied to that limitation. *Id.* at 651-52, 663. In other words, this Court determined that "excess travel" periods do count against the STA's 70-day limit when it agreed with the petitioner that 10 days were "considered excessive, during which the 70-day Speedy Trial Act clock continued to tick." *Id.* at 661. However, this Court did not address the conflict between the circuits regarding 18 U.S.C. § 3161(h)(1)(A) and that provision's application to excess travel.

C. The Eighth Circuit uses a hybrid approach, counting some periods of excess travel under 18 U.S.C. § 3161(h)(1)(F), and excluding some periods before arrival at the place of examination as "proceedings" under 18 U.S.C. § 3161(h)(1)(A).

The Eighth Circuit, in its decision below, adopted neither the majority nor minority approach to calculating excess travel periods for competency evaluations under the STA. Instead, it created a third, hybrid, approach.

In Wolter's case below, the Eighth Circuit aligned with the majority of other circuits when it found that an expansive view of 18 U.S.C. § 3161(h)(1)(A) rendered 18 U.S.C. § 3161(h)(1)(F) superfluous, as it applied to Wolter's time in Oklahoma. App. 6a (citing *Corley v. United States*, 556 U.S. 303, 315 (2009)). In other words, the time Wolter spent traveling from North Dakota to Oklahoma, and all of the time

spent in Oklahoma, less 10 days, counted toward the 70-day limitation under 18 U.S.C. § 3161(h)(1)(F). *Id.*; *see also id.* at 9a (Stras, J. concurring and dissenting in part) ("The easy part was treating the time in Oklahoma as a 'transportation delay' . . . . On that point, the court and I agree.").

However, the Eighth Circuit parted ways with the majority approach when it determined that the excess transportation "count" ended when Wolter arrived in San Bernardino, California. The court explained that the time in San Bernardino was considered "proceedings" under § 3161(h)(1)(A), applying its precedent from *McGhee*:

> [T]he "nearly four months" (120 days) Wolter spent waiting for an opening at the psychological evaluation facility do not count toward the STA's 70-day limit. Section 3161(h)(1)(A) excludes "delay[s] resulting from any proceeding . . . to determine the mental competency or physical capacity of the defendant." And this court previously held time spent waiting for transportation to an evaluation facility "involved proceedings to determine [a defendant's] competency." *McGhee*, 532 F.3d at 737.[ ] Here, like in *McGhee*, the period of delay from June 17 to September 10, 2021, resulted from Wolter waiting in San Bernardino for an examination. Thus, under our prior precedent, this time is excluded as part of the "proceeding[s]." *See id.*

App. 6a.

Therefore, the Eighth Circuit's application of the STA provisions did not align with either side of the split. It neither applied 18 U.S.C. § 3161(h)(1)(A) to exclude the entire competency evaluation period, like the Second Circuit does, nor applied 18 U.S.C. § 3161(h)(1)(F) to "count" travel delay until arrival at the place of examination, like the majority of courts of appeals do. Instead, the Eighth Circuit created further division in the analysis and application of those provisions of the

STA. The split of authority among the courts of appeals is expanding and should be resolved by this Court.

II. The decision below was wrongly decided.

The Eighth Circuit's hybrid approach is inconsistent with the plain text of 18 U.S.C. § 3161(h)(1)(F). Moreover, the government provided no factual grounds to distinguish the time spent in Oklahoma and in San Bernardino, or any argument why these delays were reasonable. *See* App. 10a (Stras, J., concurring and dissenting in part) ("The government also could have fixed the problem by making these same points . . . to rebut the 'presum[ption]' that it was 'unreasonable' to spend more than ten days transporting him."). Thus, there was nothing in the record to support the Eighth Circuit's legal distinction between these locations. *See* App. 10a (Stras, J., concurring and dissenting in part).

The dissenting opinion presented the better reading and application of the STA to Wolter's case. Judge Stras's dissenting opinion argued that the majority's analysis was neither *externally* consistent with the language of the STA or *McGhee*, as it related to the time Wolter spent in San Bernardino, nor *internally* consistent with the analysis applied to the time Wolter spent in Oklahoma:

> The court offers no real explanation for treating the two stops differently. It cannot be that the whole trip "result[ed] from [a] proceeding ... to determine [Wolter's] mental competency," [18 U.S.C.] § 3161(h)(1)(A), because the court rejects the government's invitation to read that exclusion so broadly that it swallows the transportation-specific one. *See Corley v. United States*, 556 U.S. 303, 314, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009) (explaining that courts should avoid readings that would make part of a statute "inoperative or superfluous" (citation omitted)). Nor can it just be that he was "waiting for transportation to an evaluation facility" in San Bernardino, *ante* at

> [App. 6a], because he spent weeks waiting in Oklahoma too. *See* [ ] *McGhee*, 532 F.3d [at] 736–38 [ ] (holding that time spent waiting at the defendant's original facility *before* the clock-starting "order directing transportation" was not transportation time, but a delay *after* the order "did involve ... *transportation*"). Neither was his "place of examination." And getting close is not good enough: the Speedy Trial Act required him to be "*at* the destination," not *near* it. 18 U.S.C. § 3161(h)(1)(F) (emphasis added).
>
> It is true that the statute refers to the "delay *resulting from transportation*," *id.* (emphasis added), and Wolter was not on the move after he arrived in San Bernardino. Nor was he held up by something related to the travel itself, like a flat tire or a grounded flight. *Cf. McGhee*, 532 F.3d at 739. But the fact that a law enacted in 1975 expressly contemplates situations in which it takes longer than ten days for a defendant to get where he is going is a clear sign that extended layovers, not just detours and traffic jams, are what Congress had in mind. *See id.* at 738 (counting days during a two-week stop on the way back from a competency examination); *see also id.* (stating that the "transportation clock starts ... on the date of an order directing transportation" and stops on "the date [the defendant] arrive[s]" (emphasis added)).

App. 10a-11a (Stras, J., concurring and dissenting in part).

The dissenting opinion below, and the First, Third, Fifth, and Sixth Circuits, have it right. Their approach gives full effect to 18 U.S.C. § 3161(h)(1)(F) by stopping the excess travel count at the time a defendant arrives at the place of the competency examination. Congress, by enacting 18 U.S.C. § 3161(h)(1)(F), indicated its desire to limit excess transportation delays between the order for transportation and arrival at the final destination. These dates are easy to establish and identify, leading to clear, fast, and routine application of the STA. Moreover, Congress provided avenues for the government or the district courts to avoid the strict requirements of these defined points by showing that the transportation delay was

reasonable. Those avenues were not pursued here. App. 11a (Stras, J., concurring and dissenting in part).

Wolter asks this Court to grant certiorari and make clear that the STA is applied faithfully to its design.

III. This case is an ideal vehicle for the question presented.

This case squarely presents the legal issues driving the Circuit split regarding excess travel to and from a competency evaluation under the STA. The merits of Wolter's Speedy Trial motion came down to whether the period of time he was detained in San Bernardino, June 17 to September 10, 2021, counted toward the speedy trial clock under 18 U.S.C. § 3161(h)(1)(F), or whether it was excluded as "proceedings" under 18 U.S.C. § 3161(h)(1)(A). App. 6a, 10-11a. This case presents a clean framing of the legal issue, uncluttered by collateral matters that were not preserved by the government or articulated by the district court. App. 11a (Stras, J., concurring in part and dissenting in part) (identifying other provisions of the STA that could have resolved this matter, but were not pursued in the district court).

This case is an ideal vehicle for resolution of the question presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated this 20th day of February, 2025.

Respectfully submitted,

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