No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October 2018 Term

PATRICK ASFOUR,

PETITIONER

versus

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Was the United States Court of Appeals for the Tenth Circuit's decision in conflict with decisions of the United States Courts of Appeal for the Third, Fourth, Fifth, Ninth and Eleventh Circuits. The Tenth Circuit assumed a ruse exception for state arrests, putting it in conflict with decisions of the United States Courts of Appeals for the Third and Eleventh Circuits. (Order and Judgment at pg. 7). If this Honorable Court finds that the Tenth Circuit did not adopt the ruse exception by the Tenth Circuit's stated assumption, then not making a decision on whether the ruse exception applies puts the Tenth Circuit in conflict with the Third, Fourth, Fifth, Ninth and Eleventh Circuits.

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ORDER AND JUDGMENT BELOW

The Order and Judgment of the United States Court of Appeals for the Tenth Circuit was entered on December 8, 2017, and was unpublished. The Order and Judgment are attached to this Petition as Appendix "A".

JURISDICTION

The Order and Judgment was entered on December 8, 2017. The Jurisdiction of this Court is invoked under Title 28, U.S.C. § 1254(1).

STATEMENT REGARDING PROCEEDING IN FORMA PAUPERIS

The United States District Court for the Western District of Oklahoma appointed counsel under the Criminal Justice Act of 1964, 18 U.S.C. § 3006A. Leave to proceed *informa pauperis* was granted in the U.S. District Court for the Western District of Oklahoma as well as the U.S. Court of Appeals for the 10th Circuit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. VI:

> The Sixth Amendment to the United States Constitution provides in relevant part that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury..."

18 U.S.C. §3161(b) (Speedy Trial Act):

> (b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

CONCISE STATEMENT OF THE CASE

Mr. Asfour was charged by Superseding Indictment with the crimes of conspiracy, aiding and abetting, to commit the crime of interstate travel with intent to commit a crime of violence on a law enforcement officer with intent to facilitate a business enterprise involving marijuana transportation and distribution in violation of 18 U.S.C. Section 841(a)(1) and 18 U.S.C. Section 1952(a)(2) (Counts 1 and 2). Count 3 charged Possession with Intent to Distribute a Schedule I Controlled Substance; and Aiding and Abetting in violation of 21 U.S.C. §841(a)(1), 18 U.S.C. §2(a), and 21 U.S.C. §841(b)(1)(C). Count 4 charged Mr. Asfour with carrying a Firearm During and in Relation to a Drug Trafficking Crime (Pistol) and (Short-barrel rifle) in violation of 18 U.S.C. §924(c)(1)(A), 18 U.S.C. §924(c)(1)(A)(I), 18 U.S.C. §924(c)(1)(B)(I), and 18 U.S.C. § 2(a) and Count 5 charged Mr. Asfour with Possession of an Unregistered Firearm in violation of 26 U.S.C. §5861(d), and 18 U.S.C. §2(a).

The government filed the Government's Motion to Continue Trial of Defendant Asfour to the February 2016 Trial Docket. Mr. Asfour filed Defendant Patrick Samir Asfour's Response to Government's Motion to Continue Trial of Defendant Asfour To the February 2016 Trial Docket.

Within the Response, Mr. Asfour objected to the continuance request by the government, stating the indictment was in violation of the Speedy Trial Act. The trial court granted the government's motion to continue.

On January 7, 2016, Mr. Asfour filed a Motion to Dismiss Indictment, Request for Evidentiary Hearing and Brief in Support ("Mtn to Dismiss").

Mr. Asfour pled guilty on February 23, 2016, to Count 2: Interstate Travel in Aid of Racketeering; and Aiding and Abetting 18 U.S.C. § 1952(a)(2), 18 U.S.C. § 1952(a)(3)(B), and 18 U.S.C. § 2 Not more than 20 years imprisonment/$250,000.00 fine. (Class C Felony); Count 3: Possession with Intent to Distribute a Schedule I Controlled Substance; and Count 4: Carrying a Firearm During and in Relation to a Drug Trafficking Crime.

Mr. Asfour reserved in the plea the right to appeal his motion to dismiss, accompanying government's response, the court's minute ruling including pertinent sections of the transcripts from the hearing on February 19, 2016.

Mr. Asfour was sentenced to the custody of the Bureau of Prisons for a term of 190 months. The sentence consisted of 130 months as to Count 2, 130 months as to Count 3, to be served concurrently; and 60 months as to Court 4, to be served consecutively.

Mr. Asfour filed his direct appeal with the U.S. Court of Appeals for the Tenth Circuit on February 22, 2017, CCA 16-6231. The 10th Circuit rendered its Order and Judgment on December 8, 2017, affirming Mr. Asfour's conviction.

Basis for Federal Jurisdiction

At the federal district court level, Mr. Asfour filed a motion to dismiss based on a violation of the 18 U.S.C. §3161(b) (Speedy Trial Act). The district court denied his motion to dismiss. Mr. Asfour appealed the district court's denial to the United States Court of Appeals for the Tenth Circuit, asserting a denial of his rights under the federal Speedy Trial Act. The Tenth Circuit's Order and Judgment affirmed the judgment of the district court.

Question presented

Was the United States Court of Appeals for the Tenth Circuit's decision in conflict with decisions of the United States Courts of Appeal

for the Third, Fourth, Fifth, Ninth and Eleventh Circuits. The Tenth Circuit assumed a ruse exception for state arrests, putting it in conflict with decisions of the United States Courts of Appeals for the Third and Eleventh Circuits. (Order and Judgment at pg. 7). If this Honorable Court finds that the Tenth Circuit did not adopt the ruse exception by the Tenth Circuit's stated assumption, then not making a decision on whether the ruse exception applies puts the Tenth Circuit in conflict with the Third, Fourth, Fifth, Ninth and Eleventh Circuits.

STATEMENT

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals for the Tenth Circuit has entered a decision in conflict with decisions of the United States Courts of Appeal for the Third, Fourth, Fifth, Ninth and Eleventh Circuits. In its Order and Judgment, the Tenth Circuit "assumed" a ruse exception for state arrests, putting it in conflict with decisions of the United States Courts of Appeals for the Third and Eleventh Circuits. (Order and Judgment at pg. 7) and 18 U.S.C. §3161(b) (Speedy Trial Act).

I. The Tenth Circuit is in Conflict with the Fourth, Fifth and Ninth Circuits

If this Honorable Court finds that the Tenth Circuit did not adopt the ruse exception by the Tenth Circuit's stated assumption at page 7 of its Order and Judgment, then the Tenth Circuit's failure to make a decision on whether the ruse exception applies puts the Tenth Circuit in conflict with the Third, Fourth, Fifth, Ninth and Eleventh Circuits.

Mr. Asfour was denied his right to a fair and speedy trial and the Tenth Circuit's failure to adopt the ruse exception denied Mr. Asfour his rights under the Speedy Trial Act as well as was in conflict with the adoption of the ruse exception by the Fourth, Fifth and Ninth Circuits.[1]

These three Circuits have agreed a ruse exception allows the Speedy Trial Act to be "triggered by state detentions that are merely a ruse to detain the defendant solely for the purposes of bypassing the requirements of the Act." *United States v. Benitez*, 34 F.3d 1489 (C.A.9

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[1] The Tenth Circuit has adopted the ruse exception when the federal government *civilly* detains an individual to avoid Speedy Trial Act requirements. Order and Judgment at pg. 7; *United States v. Pasillas-Castamon*, 525 F.3d 994, 997-98 (10th Cir. 2008).

(Cal.), 1994); *United States v. Woolfolk*, 399 F.3d 590, 596 & n.7 (4th Cir. 2005) (adopting broad ruse exception).[2]

As was is set forth in *Benitez*:

> The Speedy Trial Act would lose all force if federal criminal authorities could arrange with state authorities to have the state authorities detain a defendant until federal authorities are ready to file criminal charges. For this reason, Speedy Trial Act time periods may be triggered by state detentions that are merely a ruse to detain the defendant solely for the purpose of bypassing the requirements of the Act. See, e.g., *Cepeda-Luna*, 989 F.2d at 357-58 (recognizing ruse exception but finding no evidence of ruse in given case); *Orbino*, 981 F.2d at 1036-37 (same); *United States v. Okuda*, 675 F.Supp. 1552, 1555 (D.Haw.1987) (finding violation of Speedy Trial Act where federal authorities purposefully use INS to detain defendant pending filing of criminal complaint). *Id.*

The Fourth, Fifth and Ninth Circuits recognized the ruse exception applies to state criminal detentions, but did not find an actual ruse existing. *See, e.g.*, *Woolfolk*, 399 F.3d at 596-97 & n 7 (adopting broad ruse exception but not finding existence of ruse); *United States v. Monneyham*, 376 Fed. Appx. 440, 441 (5th Cir. 2010) (unpublished)

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[2] In its Order and Judgment, the Tenth Circuit also relied upon whether a prosecutor knew that the state detention was a ruse for a later federal prosecution. This finding by the Tenth Circuit is also in conflict with the Fourth Circuit wherein whether a prosecutor knew was not singled out, but rather "If the Government knew or should have known...that the Government violated the Act." *Id.*

recognizing the ruse exception applies to state detention but finding no ruse existed); *Benitiz*, 34 F.3d at 1494-95 (adopting ruse exception for state criminal detention but not finding existence of ruse). The Tenth Circuit's Order and Judgment is squarely in conflict with these Circuits and this conflict has resulted in depriving Mr. Asfour his right to a speedy trial under 18 U.S.C. 3161(b) and U.S. Const. Amend. VI.

II. The Tenth Circuit's Order and Judgment is in conflict with the Third and Eleventh Circuits

The Third Circuit, in *United Sates v. Dyer*, 325 F.3d 464, 483 (3d Cir. 2003) has declined to reach the issue when the defendant did not clearly qualify for the ruse exception but held that even if such exception existed, the Third Circuit would only apply it "when federal criminal officials collude with civil authorities to detain an individual pending criminal charges, such that the primary or exclusive purpose of civil detention is to hold the individual for future prosecution'). *Id.*

In *United States v. Alvarado-Linares*, 598 F. Appx. 969, 974 (11th Cir. 2017) the Eleventh Circuit refused to apply the exception in the context which the Fourth Circuit found to be applicable, that is, "the Government has knowledge that an individual is being held by state

authorities solely to answer to federal charges"). See also *United States v. Bocanegra*, 631 Fed. Appx. 871, 874-75 (11th Cir. 2015), which acknowledged the exception in this context in other courts but which suggested applying the exception to state detentions could create sovereignty issues.

III. The Tenth Circuit Assumed the Ruse Exception for State Arrests, and its Assumption Was in Conflict with Other Circuits, and in the Alternative the Decision of the Tenth Circuit to Not Affirmatively Rule That the Ruse Exception Either Applies or Does Not Apply, Puts it in Conflict with the Third, Fourth, Fifth, Ninth and Eleventh Circuits

The Tenth Circuit assumed a ruse exception for state arrests, therefore putting it in conflict with the Third and Eleventh Circuits. If however this Honorable Court finds that the Tenth Circuit did not adopt the ruse exception by the Tenth Circuit's stated assumption, then not making a decision on whether the ruse exception applies puts the Tenth Circuit in conflict as set forth above with the Fourth, Fifth and Ninth Circuit or with the Third and Eleventh Circuits.

Mr. Asfour's position is that the Tenth Circuit did apply the ruse exception by presenting its decision should the ruse exception apply. In other words, the Tenth Circuit applied the ruse exception by finding that:

> "Assuming without deciding that we would adopt a ruse exception for state arrests, defendants would need to meet this heavy burden of demonstrating that "the *primary or exclusive purpose* of [the state detention] was to hold the defendant for future [federal] prosecution" and that the state authorities did not have a "lawful basis for their [state] detention." *Id.* Order and Judgment at pgs. 7,8.

The Tenth Circuit held in the case herein that the district court's ruling that Mr. Asfour had not established the prerequisites for application of the ruse exception was not an abuse of discretion. Order and Judgment at pg. 8. The Tenth Circuit's holding per its assumption of application of the ruse exception put the Tenth Circuit in conflict with the Third and Eleventh Circuits which do not find the ruse exception applies.

Alternatively, as a result of either finding the ruse exception applicable or finding that the ruse exception was not applicable in federal law, the Tenth Circuit is in conflict with one or more Circuits, either in conflict with the Fourth, Fifth and Ninth Circuit or in conflict with the Third and Eleventh Circuit. The refusal to adopt the ruse exception by the Tenth Circuit is in conflict with the Fourth, Fifth and Ninth Circuits and the Tenth Circuit's refusal to not apply is in conflict with the Third and Eleventh Circuits. If the Tenth Circuit had found the ruse exception was not applicable and therefore agreeing with the Eleventh and Third

Circuit, the Tenth Circuit would have been in conflict with the Fourth, Fifth and Ninth Circuit. If the Tenth Circuit were to find the ruse exception did apply or was applicable and/or is correct, then the Tenth Circuit would have been in conflict with the Eleventh and Third Circuits that the ruse exception does not apply.

IV. The Court Should Grant Cert to Resolve the Conflict in Circuits Because this Case is a Good Vehicle for Deciding the Question Presented

First, the record in the lower courts and on appeal to the Tenth Circuit is fully developed. Indeed, the Government advanced to the Tenth Circuit that "The district court had extensive evidence before it to support this decision." Brief of Appellee at pg. 21.

Second, this case has only one sharply presented issue of law, that is, whether the Tenth Circuit incorrectly applied and/or failed to apply the ruse exception for Mr. Asfour's state arrest and whether that decision was in conflict with other United States Circuit Courts of Appeal as set forth above.

Third, seven Circuits have not addressed the ruse exception and these Circuits, as well as the Circuits who are presently in conflict as set forth above, are ripe for guidance from this Honorable Court on a critical

issue which impacts many citizens who have been charged by the state but could be, in reality, be being detained under a ruse for future federal criminal prosecutions. In their Brief of Appellee filed in the Tenth Circuit, the government recognized the conflicts in the Circuits. Brief of Appellee at pgs. 17-19.

Fourth, the Tenth Circuit thoroughly discussed its refusal to find whether the ruse exception was applicable or was not applicable. Therefore, this Honorable Court has a well presented record from which to find that certiorari is appropriate to decide if the Tenth Circuit Court of Appeals was in error.

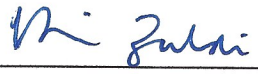
Fifth, the ruse exception claim was not a frivolous claim in that the United States agreed as part of the plea agreement that Mr. Asfour could reserve and present this issue for appeal.

V. Conclusion

The Tenth Circuit Court of Appeals' decision resulted in a denial of Mr. Asfour's constitutional rights under the Sixth Amendment to the United States Constitution and the federal Speedy Trial Act. Compelling reasons exist for granting the petition for writ of certiorari. The Tenth Circuit Court of Appeals has entered a decision in conflict with decisions

of other United States Courts of Appeals and has so far departed from the usual and accepted course of judicial proceedings as to call for an exercise of this Court's supervisory powers. Supreme Court Rule 10(a). Therefore, certiorari is appropriate. This Honorable Court should grant the petition for a writ of certiorari and reverse the decision of the Tenth Circuit Court of Appeals.

Respectfully submitted,



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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

PATRICK ASFOUR,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

CERTIFICATE OF SERVICE

I, Bill Zuhdi, member of the bar of this Court, do hereby certify that I have served a copy of the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit on counsel for the Respondent, United States of America, by depositing the same in the U.S. Mail, postage prepaid, to:

Solicitor General of the United States
Department of Justice, Room 5614
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

this 8th day of March, 2018. All parties required to be served have been served.

Bill Zuhdi

FILED
United States Court of Appeals
Tenth Circuit

December 8, 2017

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PATRICK SAMIR ASFOUR,

Defendant - Appellant.

No. 16-6231
(D.C. No. 5:15-CR-00246-R-2)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ**, **PHILLIPS**, and **MORITZ**, Circuit Judges.

Defendant Patrick Samir Asfour claims that he was denied his rights under the federal Speedy Trial Act. His problems began when he and a companion were driving their two vehicles on an interstate highway. A traffic stop by the Oklahoma Highway Patrol (OHP) led to the discovery of firearms and drugs in the companion's vehicle. The two drivers were arrested and placed in county jail. A few days later an information was filed in state court charging them with eight violations of Oklahoma law. The state preliminary hearing was postponed or continued multiple times until finally, nine months

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

after the traffic stop, the two men were indicted in the United States District Court for the Western District of Oklahoma.

Under the Speedy Trial Act a federal arrestee must be charged by federal indictment or information within 30 days of arrest. *See* 18 U.S.C. § 3161(b). Defendant moved in federal court to dismiss the indictment against him for failure to comply with that requirement, arguing that his true federal arrest occurred at the time of the traffic stop. He contended that the state arrest and confinement were merely a ruse to avoid the 30-day requirement and give federal authorities extra time to pressure the drivers to cooperate with the prosecution. After an evidentiary hearing the district court denied the motion, ruling that Defendant had not shown a ruse. Defendant then entered into a plea bargain, agreeing to plead guilty to three counts of the indictment but reserving the right to appeal his motion to dismiss. Exercising jurisdiction under 28 U.S.C. § 1291, we hold that his appeal is without merit. The district court did not abuse its discretion in denying Defendant's motion.

I. BACKGROUND

On January 30, 2015, Defendant and Ben Issa Saoud were driving on Interstate 40 in separate vehicles. Katelyn Worstell, a pregnant 18-year old woman, was riding with Defendant. When OHP Trooper Clint Painter attempted to pull Saoud over, Defendant's vehicle struck Painter's patrol car. The government contends that Defendant intentionally hit Painter's vehicle to draw attention away from Saoud, as he was carrying more than 100 pounds of marijuana and two firearms. After all three vehicles came to a

stop, another OHP trooper arrived to assist Painter, and they discovered the drugs and guns in Saoud's vehicle. Defendant, Saoud, and Worstell were arrested.

Sam Ward, a special agent with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and OHP Trooper Mark Dlugokinski, who had been assigned to a federal Drug Enforcement Administration (DEA) task force, came to the scene to assist with the investigation. Although Defendant characterizes Dlugokinski as a federal officer, he testified otherwise and submitted an affidavit stating that his "parent agency" is OHP and that his primary investigative priority remains with OHP, though he coordinates with other agencies. R. Vol. 1 at 148. Ward testified that he became involved in the investigation because one of the firearms was a short-barreled rifle, possession of which violates federal law.

On the day of the arrest, Ward and Dlugokinski interviewed the three suspects separately. Ward and Dlugokinski presented Defendant with an ATF Miranda-waiver form, which he signed. Three days later Dlugokinski and another OHP trooper interviewed Defendant, this time offering an OHP waiver form. During these interviews Defendant and Worstell were advised of the federal charges and sentences they could be facing; and on two occasions the other interviewer said that Dlugokinski was with the DEA.

On February 4 the State of Oklahoma charged Defendant on eight counts, including assault and battery with a deadly weapon, illegal possession of firearms, trafficking in illegal drugs, and conspiracy to traffic in illegal drugs. There were significant delays in the preliminary hearing. All counsel agreed on February 25 to

postpone the hearing until March 13. On March 13, Defendant agreed to reschedule the hearing for April 10. On April 10 the prosecutor requested a continuance to assure the appearance of a witness, and the court granted a continuance to June 5, over Defendant's objection. Some testimony was presented on June 5, but all parties agreed to continue the hearing until July 31. On that date, Defendant requested a continuance because of discovery issues and the court reset the hearing for October 9. The record before us is silent on what happened regarding the preliminary hearing scheduled for October 9.

On November 18, Defendant was indicted in federal court. The state charges were dismissed a week later. On January 7, 2016, Defendant moved to dismiss the indictment for failure to comply with the Speedy Trial Act.

At the evidentiary hearing on the motion, Defendant argued that his state prosecution was instigated by the federal government to avoid the Speedy Trial Act's requirements because it wanted to keep Defendant and Saoud in county jail for several months to put pressure on them to cooperate, as evidenced by the delay in the preliminary hearing. To support his claim, Defendant played audio recordings of Dlugokinski's interviews with Defendant and Worstell in which other officers identify him as a DEA agent and the suspects are informed of potential federal charges and sentences.

In response, Dlugokinski clarified during the hearing that although he had worked with a DEA task force since November 2011, he was an OHP trooper. He also explained that in the interviews he used the long potential federal sentences as leverage to encourage Defendant and Worstell to cooperate with the state investigation. And he testified that his investigation was building a state case, not a federal case, until shortly

before the federal charges were brought. As for the delay of the preliminary hearing, the government argued that Defendant agreed to most of the continuances and requested one himself. It said that there was no actual evidence of collusion between state and federal law enforcement to detain Defendant and Saoud in preparation for a federal prosecution.

The district court denied Defendant's motion, finding "no evidence . . . whatsoever" that the state prosecution was a ruse to hold Defendant for federal prosecution to circumvent the Act. R., Vol. 1 at 193–94. In particular, it found that the officers "were trying to use the potential of a federal prosecution as leverage to get people to cooperate in the state prosecution . . . ." *Id.* at 194.

On February 23, Defendant pleaded guilty to three counts of the indictment—a Travel Act crime of violence, *see* 18 U.S.C. § 1952(a)(2); possession of marijuana with intent to distribute, *see* 21 U.S.C. § 841(a)(1); and carrying a firearm during and in relation to a drug-trafficking crime, *see* 18 U.S.C. § 924(c)(1)(A). He was sentenced to 190 months' imprisonment.

II. DISCUSSION

We review for abuse of discretion a district court's denial of a motion to dismiss for violation of the Speedy Trial Act. *See United States v. Abdush-Shakur*, 465 F.3d 458, 461 (10th Cir. 2006). This standard of review encompasses de novo review of the district court's compliance with the legal requirements of the Act and review for clear error of its factual findings. *See id.*

The Act requires that "[a]ny information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which

such individual was arrested or served with a summons in connection with such charges." 18 U.S.C. § 3161(b). If the government fails to comply with this time limit, the charges in the complaint must be dismissed, with or without prejudice. *See id.* at § 3162(a)(1).

The general rule is that "[a]n individual is 'arrested' under the Speedy Trial Act only when he is taken into custody after a federal arrest for the purpose of responding to a federal charge." *United States v. De La Pena-Juarez*, 214 F.3d 594, 597 n.6 (5th Cir. 2000). Some courts, however, have recognized a "ruse" exception to the general rule when a person is confined on grounds other than a federal criminal charge for the purpose of avoiding the requirements of the Act. Many of these cases involve confinement by immigration authorities. *See, e.g.*, *United States v. Garcia-Echaverria*, 374 F.3d 440, 451–52 (6th Cir. 2004) (assuming without deciding that ruse exception would apply in immigration context if there was collusion between immigration and criminal-prosecution authorities, but facts did not support Speedy Trial Act violation); *United States v. Dyer*, 325 F.3d 464, 468 (3d Cir. 2003) (describing ruse exception in immigration context, but declining to decide whether to adopt it as facts did not demonstrate ruse); *De La Pena-Juarez*, 214 F.3d at 598; *United States v. Pena-Carrillo*, 46 F.3d 879, 883 (9th Cir. 1995). A few have involved incarceration under state criminal authority. *See United States v. Benitez*, 34 F.3d 1489, 1494 (9th Cir. 1994) ("The Speedy Trial Act would lose all force if federal criminal authorities could arrange with state authorities to have the state authorities detain a defendant until federal authorities are ready to file criminal charges. For this reason, Speedy Trial Act time periods may be triggered by state detentions that are merely a ruse to detain the defendant solely for the

purpose of bypassing the requirements of the Act."); *United States v. Woolfolk*, 399 F.3d 590, 596, 596 n.7 (4th Cir. 2005) (state arrest could fall under Speedy Trial Act if "the Government has knowledge that an individual is being held by state authorities solely to answer to federal charges"). At least one circuit, however, apparently refused to apply the exception in that context because of the independent sovereignty of the States. *See United States v. Alvarado-Linares*, 698 F. Appx. 969, 974 (11th Cir. 2017) (rejecting application of ruse exception to arrests or detentions under state law by state officials "[b]ecause state authorities at all times held sovereign discretion as to how they separately might handle their own prosecution or non-prosecution for state offenses").

This circuit has yet to rule on whether there is a ruse exception for state arrests, but we have adopted the ruse exception when the *federal* government *civilly* detains an individual to avoid Speedy Trial Act requirements. *See United States v. Pasillas-Castanon*, 525 F.3d 994, 997–98 (10th Cir. 2008) (alien held civilly by immigration authorities). In that circumstance we held that "[t]he ruse exception is not easily triggered." *Id.* at 998. A defendant must "demonstrate[] that the *primary or exclusive purpose* of a civil detention was to hold the defendant for future criminal prosecution." *Id.* Moreover, "[w]ithout evidence of wrongful collusion for [the purpose of holding a defendant for future prosecution], the exception does not apply. In short, if the detaining authorities have a lawful basis for their civil detention, a defendant is not entitled to invoke the exception." *Id.* (footnote omitted). Further, the defendant must prove bad faith. *See id.* n.1. Assuming without deciding that we would adopt a ruse exception for state arrests, defendants would need to meet this heavy burden of demonstrating that "the

primary or exclusive purpose of [the state detention] was to hold the defendant for future [federal] prosecution" and that the state authorities did not have a "lawful basis for their [state] detention." *Id.*

The district court ruled that Defendant had not established the prerequisites for application of the ruse exception, and we hold that its ruling was not an abuse of discretion. Defendant contends that improper collusion between federal and state officials was demonstrated by evidence that (1) federal agents were involved in the investigation[1]; (2) his state prosecution was delayed for a number of months; and (3) Defendant and Worstell were threatened with federal prosecution. We are not persuaded.

Cooperation between state and federal law-enforcement officers is a commonplace that makes investigations more effective and efficient (the precise reason why a state trooper would be assigned to a DEA task force). Cooperative investigations may result in state prosecution or federal prosecution, depending on many considerations. Notably, Defendant presents no evidence of involvement by federal prosecutors before the federal indictment, although even evidence of such involvement would likely reflect just prosecutorial cooperation rather than federal use of the state criminal-justice system as a mere cat's-paw. We have held that involvement of federal criminal law-enforcement officers in immigration proceedings did not in itself trigger the ruse exception. *See*

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[1] In his appellate brief, Defendant also relies on Ward's testimony at the pretrial detention hearing that he started "piecing the case together" after first interviewing Worstell months before federal charges were brought. R., Vol. 1 at 76–78. But this evidence was not presented to the district court as part of Defendant's argument that the ruse exception applied, so we need not address it.

Pasillas-Castanon, 525 F.3d at 999; *see also Benitez*, 34 F.3d at 1493–95 (even when state arrest was result of federal investigation and federal law-enforcement officers detained defendants until state-law enforcement officers arrived to arrest them, district court did not err in finding no ruse). In any event, Dlugokinski testified (and the district court could credit) that the investigation was aimed at state charges until shortly before Defendant's federal indictment. *See Benitez*, 34 F.3d at 1495 (district court did not err in relying on state prosecutor's testimony that State had intended to prosecute defendants if federal charges were not brought soon).

Nor do the delays in the state prosecution suggest that the state prosecution was engineered by federal prosecutors. Of the nearly 10 months between Defendant's arrest and his federal indictment, less than two months of the continuances were over Defendant's objection, and more than two months (indeed, the final continuance) was at Defendant's request. There was no evidence of intentional stalling for any improper purpose. The district court was hardly unreasonable in being unpersuaded that the delay smacked of federal interference.

Finally, warnings about possible stiff federal sentences do not show that a decision had been made to pursue federal prosecution. Dlugokinski gave a perfectly plausible reason for telling the suspects of the federal charges and sentences that could be imposed. It is not unheard of for investigators to try to induce cooperation by making the risks of noncooperation look as severe as possible. The district court credited that reason, stating that the officers "were trying to use the potential of a federal prosecution as leverage to get people to cooperate in the state prosecution." R., Vol. 1 at 193–94. *See Pasillas-*

Castanon, 525 F.3d at 998 ("The mere fact that the detaining authorities are aware other potential criminal charges are available does not trigger the [ruse] exception.").[2]

In short, the district court properly ruled that Defendant had failed to show that "the *primary or exclusive purpose* of [the state detention] was to hold [Defendant] for future [federal] criminal prosecution." *Pasillas-Castanon*, 525 F.3d at 998. Even if we were to adopt the ruse exception for state detention, Defendant would not be entitled to relief.

III. CONCLUSION

We **AFFIRM** the judgment below.

Entered for the Court

Harris L Hartz
Circuit Judge

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[2] The government also contends that Defendant failed to show that the state arrest was unlawful or in bad faith, which it argues are requirements for applying the ruse exception. The district court did not rely on either ground and we need not address them.