
No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

DWAYNE TOLAND,
Petitioner,

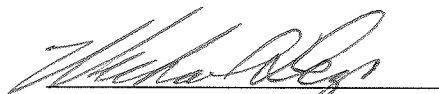
v.

UNITED STATES OF AMERICA,
Respondent.

APPEARANCE OF COUNSEL

Pursuant to Rule 9 of the Supreme Court Rules, please enter my appearance as counsel for Petitioner Dwayne Toland. Undersigned counsel was appointed to represent Petitioner under the Criminal Justice Act, 18 U.S.C. § 3006A.

Respectfully submitted,



Michael R. Dezsi (P64530)

Counsel of Record

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Date: March 29, 2018

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

DWAYNE TOLAND,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

QUESTION PRESENTED

This case raises a question of statutory interpretation as to a provision of the Speedy Trial Act. In rejecting Petitioner’s speedy trial claim under 18 U.S.C. § 3161(b), the Sixth Circuit concluded that, although Petitioner was arrested in July 2009 but not charged until April 2014, his arrest didn’t trigger the protections of the Speedy Trial Act which provides that “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.”

A violation of § 3161(b) compels the dismissal of a charge. 18 U.S.C. § 3162(a)(1). Despite the fact that Toland was arrested in July 2009 and not charged until April 2014, the lower courts rejected Defendant’s speedy trial claim under § 3161(b) by finding that Toland’s arrest didn’t trigger the protections of § 3161(b). In reaching this conclusion, the lower courts ignored the express language of the statute and, instead, created a statutory exception not supported by the Act.

Thus, the question of first impression now presented to this Court is:

Whether a defendant is entitled to dismissal of his charges where the Government fails to file charges within 30 days following the defendant’s arrest “in connection with such charges.”

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dwayne Toland petitions this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit resolved this case in an unpublished opinion issued on November 22 2017, which is attached to this Petition as Appendix **Exhibit A.**

The Sixth Circuit's Order denying Petitioner's Petition for Rehearing En Banc was denied in a written order dated January 4, 2018, which is attached to this Petition as Appendix **Exhibit B.**

JURISDICTION

The Sixth Circuit issued an Order denying Petitioner's Motion for Rehearing En Banc on January 4, 2018. This Petition is filed within ninety days of that date, as required by Rule 13.3 of the Supreme Court Rules. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides in relevant part:

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

U.S. Const. Amend XI.

STATEMENT OF THE CASE

Starting in October 2008, federal agents, including DEA Special Agent Jared Sullivan, began obtaining search warrants for cell phone records of individuals suspected of drug trafficking. In his application for a search warrant of cell phone records, Sullivan identified Toland and a Detroit address of 15359 Chapel, Detroit, as the subscriber to a phone number linked to drug trafficking.

On or about June 30, 2009, Sullivan obtained a search warrant for Defendant's residence at 15359 Chapel, Detroit, Michigan. On July 1, 2009, DEA agents executed the search warrant at which time Mr. Toland was handcuffed and secured. Upon completion of execution of the warrant, the agents seized several handguns and subsequently released Mr. Toland.

On April 3, 2014, the government filed under seal a multi-count criminal indictment in the Eastern District of Michigan. On February 10, 2015, the Government filed its First Superseding Indictment charging Mr. Toland with one count of conspiracy to possess with intent to distribute one or more kilo of heroin, and one count of possessing a firearm in furtherance of a drug trafficking crime. On February 10, 2015, Mr. Toland made his initial appearance before a magistrate judge of the Eastern District of Michigan at which time he entered a plea of not guilty and was released on an unsecured bond.

On July 9, 2015, Mr. Toland filed a motion to dismiss based on a violation of the Speedy Trial Act, 18 U.S.C. § 3161(b). The government opposed Toland's motion.

On August 25, 2015, the district court heard arguments on Toland's motion to dismiss and denied the motion "based on the reasons set forth in the Government's response."

Trial commenced on July 5, 2016, and on July 13, 2016, the jury found Toland guilty on Count One while acquitting him on Count Two.

On December 14, 2016, the district court sentenced Toland to 140 months of incarceration. On December 12, 2016, the court entered its Judgment, to which Defendant appealed both his conviction and sentence.

1. The Sixth Circuit's Opinion affirming Petitioner's conviction.

In its unpublished opinion, a panel of the Sixth Circuit affirmed Petitioner's conviction and sentence. (**Apx. Exhibit A**, Sl. Op.). In affirming his conviction, the Sixth Circuit relied on its prior published decision in *United States v. Graef*, 31 F.3d 362 (1994) and rejected Toland's Speedy Trial claim under § 3161(b).

REASONS TO GRANT THE WRIT

- I. In rejecting Petitioner’s speedy trial claim under 18 U.S.C. § 3161(b), the Sixth Circuit concluded that, although Petitioner was arrested in July 2009 and not charged until April 2014, his arrest didn’t trigger the protections of the Speedy Trial Act which provides that “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.”

This case presents the Court with an important question of criminal law and procedure that has never been addressed by this Court. Specifically, this Court has yet to consider the statutory interpretation of 18 U.S.C. § 3161(b) which provides 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.” A violation of § 3161(b) compels the dismissal of a charge. 18 U.S.C. § 3162(a)(1).

Despite the fact that Defendant was arrested in July 2009 and not charged until April 2014, the lower courts rejected Toland’s speedy trial claim under § 3161(b) by finding that Defendant’s arrest didn’t trigger the protections of § 3161(b). In reaching this conclusion, the lower courts ignored the express language of the statute and, instead, created a statutory exception not supported by the Act.

Despite the absence of a circuit split, Court should grant certiorari in the instant case pursuant to Supreme Court Rule 10(c) which provides for review on certiorari if “a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court[.]” Given the exceptional importance of the legal question presented, this Court should grant the instant petition.

I. Introduction

Title 18 U.S.C. § 3161(b) of the Speedy Trial Act (“STA”) commands that an “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.” Here, Defendant was arrested in July 2009 for the same conduct that formed the basis of his charges in February 2015.

Defendant moved to dismiss his indictment as provided for under 18 U.S.C. § 3162(a)(1). The district court denied Defendant’s motion and the Sixth Circuit affirmed the lower court’s decision relative to Defendant’s STA claim under § 3161(b). In affirming the lower court’s ruling, the Sixth Circuit found that Defendant’s STA argument was foreclosed by the Sixth Circuit’s prior published decision in *United States v. Graef*, 31 F.3d 362 (1994). Defendant contends that *Graef* was wrongly decided and this Court should grant certiorari to provide a correct interpretation of the statute.

Defendant’s statutory claim under the Speedy Trial Act is based on 18 U.S.C. § 3161(b) which provides that:

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.

Toland was “arrested” during the execution of a search warrant of his home on July 1, 2009. There is no dispute that Defendant’s July 2009 arrest was made “in connection with” the charges that were ultimately brought against him in April 2014.¹ Given these facts, Defendant

¹ Defendant’s Indictment was sealed and remained so until February 10, 2015, at which time the government filed its First Superseding Indictment charging Mr. Toland with one count of conspiracy to possess with intent to distribute 1 or more kilo of heroin, and one count of possessing a firearm in furtherance of a drug trafficking crime.

asserted that the government violated § 3161(b) by failing to indict him within 30 days of his arrest and he was thus entitled to a dismissal of the charges as provided for in § 3162(a)(1).

In *United States v. Graef*, 31 F.3d 362 (1994), the Sixth Circuit was presented with, and rejected, an identical argument raising a statutory violation of the STA under § 3161(b). In *Graef*, the defendant was arrested on June 18, 1992 for drunk driving in violation of Michigan law (the offense occurred on Selfridge Air Force base such that it was federally prosecuted). Defendant wasn't charged until December 1992. Defendant sought to dismiss his charges under § 3161(b) given the more-than-30-day delay between his arrest and charges.

In rejecting Graef's statutory claim, the Sixth Circuit concluded that "[t]here is no question but that Graef was 'arrested' on June 18 in the ordinary, and constitutional, sense of that word and that this arrest was 'in connection with' the OUIL conduct charged in the December 16 indictment." *Graef*, 31 F.3d at 363. Notwithstanding these facts, the Court found that Graef's 'arrest' didn't trigger a violation of 3161(b) because such statute "applies only to arrests made either on a complaint or which were immediately followed by a complaint." *Id.* (internal citations omitted). Defendant contends that *Graef* was wrongly decided and its analysis is squarely contradicted by the express terms of the statute.

Under the statute, the court must consider three questions: (1) a defendant's arrest date; (2) his charging date; and (3) whether the arrest was "in connection with such charges." If the record shows, as it does here, that a defendant was charged more than 30 days after his arrest "in connection with such charges," then the STA compels the result that the charges "shall be dismissed or otherwise dropped." 18 U.S.C. § 3162(a)(1). The Sixth Circuit's interpretation, as set forth in *Graef* and applied to Toland, ignores the express language of the statute.

In particular, the *Graef* Court concluded that that 3161(b) applies “only to arrests made either on a complaint or which were immediately followed by a complaint.” Such a *judicially* created rule wipes clean the very protection that § 3161(b) seeks to protect; that is, excessive or unreasonable delays between arrests and indictments. If charges were brought “immediately” following the arrest, there would be no violation of 3161(b)².

If the arrest can be shown to be “in connection with such charges” then the statute compels the government to act within the time permitted under the statute. The statute contains no such caveat or qualification, as found by the Sixth Circuit in *Graef*, and the Sixth Circuit’s rule creates ambiguity and discretion where none exist under the statute.

Moreover, in *Graef*, the Court noted that “[t]here was no question but that Graef was ‘arrested’ on June 18 in the ordinary, and constitutional sense of that word and that his arrest was ‘in connection with’ the OUIL conduct charged in the December 16 indictment.” *Graef*, 31 F.3d at 363. Notwithstanding the fact that Graef’s indictment came more than 30 days after his arrest, and that his arrest was “in connection with” the charges that were eventually filed against him, this Court concluded that the 30-day speedy trial protections did not apply based on the remedial provision of the STA.

The remedial provision, however, does not undermine or vitiate, in any way, the affirmative time protections afforded by § 3161(b). The remedial provision simply provides that:

If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) . . . such charge against the individual contained in such complaint shall be dismissed or otherwise dropped.

² Under *Graef*, courts would be left to ponder under what circumstances a charge is untimely following an arrest. The application of *Graef* results in discretion that conflicts with the plain terms of the STA.

18 U.S.C. § 3162(a)(1). In interpreting this provision, the Sixth Circuit held that “[t]his lack of a remedy for a more-than-thirty-day delay between the complaintless arrest and the filing of an indictment or information has led courts unanimously to conclude that the arrest ‘trigger’ for § 3161(b) applies only to arrests made either on a complaint or which were immediately followed by the complaint.” (citations omitted).

The Court’s reasoning, however, renders meaningless the very protection afforded by § 3161(b) in the first instance; that is, to prevent stale indictments “in connection” with a arrest. By interpreting the plain language of the statute to apply only to arrests that were “immediately” followed by a complaint, the Court injected its own discretionary temporal restriction into the statute.

So what constitutes “immediately?” Arrests and complaints made the same day, the next day, seven days apart, twenty-nine days apart? Under its analysis, the *Graef* Court engrafted a discretionary time proscription (“immediately”) into the statute where the statute already provided an express time proscription of 30 days. The Sixth Circuit’s reliance on the remedial provision of 3162(a)(1) lends no support for such a conclusion.

In particular, the *Graef* Court interpreted the remedial provision of § 3162(a) to apply only to complaints while overlooking indictments. Clearly, the affirmative proscription found in § 3161(b) covers both indictments and informations, yet *Graef* interpreted the statute to render meaningless the statute’s inclusion of indictments.

Seemingly, the *Graef* Court reached its erroneous conclusion by focusing on the parenthetical clause of the remedial provision that provides “in the case of any individual against whom a complaint is filed charging such individual with an offense.” This parenthetical clause does not, however, vitiate the affirmative proscription set forth in § 3161(b). Reading the

remedial provision without such parenthetical makes clear that “[i]f . . . **no indictment or information** is filed within the time limit required by section 3161(b) . . . such charge against that individual contained in such complaint shall be dismissed or otherwise dropped.” (emphasis added).

A more logical reading of § 3162(a)(1) would be that an individual who was arrested, but has not yet been charged, may not avail himself of the protections of the STA. In other words, the proscriptions of the STA apply only to individuals “against whom a complaint is filed[.]” This reading of the statute harmonizes both the time restrictions set forth in § 3161(a) with the remedial provision of § 3162. Indeed, both provisions speak to and apply to criminal complaints whether brought by indictment **or** information.

In reaching its conclusion that the statute applies only to “arrests made either on a complaint or which were immediately followed by a complaint,” the *Graef* Court judicially modified, and discarded, an express proscription of the statute as it relates to indictments brought more than 30 days after an arrest in connection with such indictment. To the extent that *Graef* relied on the Sixth Circuit’s prior *per curiam* decision in *United States v. Alfarano*, 706 F.2d 739 (6th Cir. 1983), *Alfarano*’s analysis is also based on a contorted reading of the statute.

In *Alfarano*, a panel of the Sixth Circuit also faced the question of what triggers the time protection of § 3161(b). There, the court relied on the Southern District of Ohio Speedy Trial Act Implementation Plan and agreed that the proscriptions of § 3161(b) apply only “if an individual is arrested or served with a summons *and the complaint charges an offense.*” *Alfarano*, 706 F.2d at 741 (emphasis in original)³. Like *Graef*, *Alfarano*’s reasoning cannot be reconciled with the express terms of the statute. *Alfarano*’s interpretation that the statute applies

³ It should be noted that the Speedy Trial Act affirmatively commands each district court to implement Speedy Trial Plans in order to ensure compliance with the Act. See 18 U.S.C. § 3165.

only if an individual is *arrested and charged* renders superfluous the express time proscription set forth in § 3161(b). The statute already details when an arrest triggers § 3161(b): if an individual is charged more than thirty days from the date on which he was arrested “in connection with such charges,” then the charges must be dismissed under § 3162(a). In reaching its erroneous conclusions, both *Graef* and *Alfarano* reached well outside the express language of the statute to judicially modify the letter and spirit of the law.

As the government points out, other circuits that have considered the instant question have followed the Sixth Circuit’s interpretation of § 3161(b) and have similarly held that § 3161(b) applies only to arrests made either on a complaint or which were immediately followed by a complaint. *See, e.g., United States v. Mills*, 964 F.2d 1186 (D.C. Cir. 1992)(*en banc*); *United States v. Bagster*, 915 F.2d 607 (10th Cir. 1990); *United States v. Summers*, 894 F.2d 90 (4th Cir. 1990). In reaching this conclusion, however, none of the circuits provide any meaningful analysis to support their conclusions. Rather, they simply cast aside the express terms of the statute in favor of a judicially engrafted exception to the Act. Such is not the function of the judiciary to ignore the express terms of a legislative enactment.

Neither *Graef* nor *Alfarano* provide persuasive, or logical, interpretations of § 3161(b), and neither can be reconciled with the express terms of the Speedy Trial Act. This Court should grant certiorari so as to provide the proper protections afforded by the Speedy Trial Act under its express terms. Given the applicability of the Speedy Trial Act to countless individuals across the country, there can be no question that the instant issue is one of exceptional importance that warrants review by this Court.

CONCLUSION

Based on the foregoing analysis, Petitioner respectfully requests that this Honorable Court grant his writ of certiorari and hear the merits of the question presented herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael Dezzi", is written over a horizontal line.

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Date: March 29, 2018