

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

In The Supreme Court Of The United States

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Markhel D'John Harris-Franklin,

Petitioner,

vs.

United States of America,

Respondent.

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On Petition for Writ of Certiorari  
To The United States Court of Appeals  
For The Eighth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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Question Presented for Review

Whether ends-of-justice continuances granted under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), may be open-ended.

Proceedings Directly Related to this Case

1. *United States vs. Markhel D'John Harris-Franklin*, 22-Cr-246 (KMM/ECW), District of Minnesota, Amended Judgment entered on 12 July 2024.
2. *United States vs. Markhel D'John Harris-Franklin*, No. 24-2451, Eighth Circuit Court of Appeals, Opinion and Judgment entered on 24 July 2025.
3. *United States vs. Markhel D'John Harris-Franklin*, No. 24-2451, Eighth Circuit Court of Appeals (Order Denying Petition for Rehearing En Banc), Order entered on 22 September 2025.

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### **Citations of the Opinions and Orders Entered Below**

In reverse chronological order, the order of the court of appeals denying the petition for rehearing *en banc* is not officially reported, but is unofficially available at *United States v. Harris-Franklin*, 2025 WL 2692680 (8th Cir. 22 Sept. 2025). The opinion of the court of appeals is reported at *United States v. Harris-Franklin*, 146 F.4th 631 (8th Cir. 2025). The district court order adopting the report and recommendation to deny the motion to dismiss is not officially reported, but is unofficially available at *United States v. Harris-Franklin*, No. CR 22-246 ADM/ECW, 2023 WL 12120410 (D. Minn. Nov. 15, 2023). The magistrate's judge's Report and Recommendation to deny the motion to dismiss is not officially reported, but is unofficially available at *United States v. Harris-Franklin*, No. 22-CR-246 (ADM/ECW), 2023 WL 12120432, (D. Minn. Oct. 2, 2023).

### **Jurisdictional Statement**

This case arose from a grand jury indictment charging Petitioner with two counts of being a felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). The district court had jurisdiction pursuant to 18 U.S.C. § 3231. Petitioner timely filed a notice of appeal on 11 July 2024, a day before the entry of the district court's judgment. The court of appeals had jurisdiction from the district court's final judgment pursuant to 28 U.S.C. § 1291. The judgment of the court of appeals was entered on 24 July 2025. The court of

appeals denied a timely petition for rehearing *en banc* on 22 September 2025. A Justice of this Court granted a timely application for an extension of the time to file a petition for certiorari until, and including, 19 February 2026. This Petition for Certiorari is timely filed within the meaning of Rule 13 of the rules of this Court. This Court has jurisdiction to review the decision of the court of appeals pursuant to a writ of certiorari under 28 U.S.C. § 1254(1).

### **Constitutional Provisions and Statutes Involved in the Case**

18 U.S.C. § 3161(h)(7)(A):

**(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:

.....

**(7)(A)** Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

### **Statement**

1. On 21 September 2022, a federal grand jury returned an indictment charging Petitioner Harris-Franklin with two counts of being a felon in

possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). The district court had jurisdiction pursuant to 18 U.S.C. § 3231.

2. At a status conference on 17 May 2023, Petitioner expressed frustration with his appointed counsel and moved the district court to dismiss his counsel and to appoint new counsel to represent him. App. at 57-62. The court granted the motion, but observed that the change in counsel would create a delay: “So effectively, we're going to have a little time built in here for you to get acquainted with a new attorney and for them to bring the new motions, if any. Understood? THE DEFENDANT: Yeah.” App. at 62.

Petitioner nonetheless made clear that he was not waiving his speedy trial rights:

THE COURT: Okay. And so you're giving up your speedy trial acts until we can get a new attorney involved in your case. Is that true?

THE DEFENDANT: No.

THE COURT: What's not true?

THE DEFENDANT: It should happen in a timely manner.

App. at 63. New counsel was appointed on 31 May 2023, but the court did not schedule a new trial date, did not issue any order setting a date to return to court, and otherwise failed to impose any deadlines at all. It also made no findings to support an exclusion of time on the running speedy-trial clock.

3. After the appointment of new counsel, forty days passed until Petitioner's lawyer filed a motion for leave to file new motions. The court granted the motion, and excluded the time from the date of the request to file additional motions until the filing deadline of 1 August 2023 – based upon an

ends-of-justice finding. The two motions filed on 1 August 2023 included a motion to dismiss for violation of Petitioner’s Speedy Trial Act (STA) rights.

4. The magistrate judge recommended denial of the motion to dismiss, but in its analysis of the forty days between appointment of new counsel and the motion for leave to file new motions, it observed that “[t]he District Judge did not expressly include the language ‘that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial’ from § 3161(h)(7)(A) when discussing the delay at the May 17 conference.” App. at 49. The magistrate therefore also recommended that the district court “make any necessary findings in the Order on this Report and Recommendation, resulting in exclusion of the time from June 1 to July 11, 2023.” App. at 50.

5. In its order adopting the report and recommendation of the magistrate judge, the district court dropped a footnote to provide the recommended findings:

As noted in the R&R, one of the time periods during which the speedy trial clock was tolled was from June 1, 2023 (the day after new counsel was appointed for Harris-Franklin) to July 11, 2023 (the day Harris-Franklin’s new counsel moved for leave to file pretrial motions). These days were excludable because the undersigned judge had granted an ends-of-justice continuance under § 3161(h)(7)(A) to allow Harris-Franklin’s new counsel a reasonable time to prepare pretrial motions. *Id.* at 16-18. The Court explained the need for the continuance on the record during a status conference in response to Harris-Franklin’s oral motion for new counsel. See Status Conf. Tr. [Docket No. 40] at 10-11. Harris-Franklin acknowledged that his new counsel would require time to prepare motions. *Id.* To the extent that the Court may not have fully articulated the basis for the continuance, the

Court finds that failure to grant a continuance would deny Harris-Franklin's counsel the reasonable time necessary for effective preparation. See 18 U.S.C. § 3161(h)(7)(B)(iv). Accordingly, the Court finds that the ends of justice served by granting the continuance outweigh the best interest of the public and Harris-Franklin in a speedy trial. See 18 U.S.C. § 3161(h)(7)(A).

App. at 31.

6. Petitioner Harris-Franklin then proceeded to trial. A jury found him guilty of the single remaining count of being a felon in possession of ammunition.

7. Petitioner timely filed a notice of appeal, and the court of appeals had jurisdiction from the district court's final judgment pursuant to 28 U.S.C. § 1291. The principal issue raised by Petitioner in the court of appeals was his claim that his right to a speedy trial had been violated.

8. In its opinion, filed on 24 July 2025, the court of appeals disagreed. While acknowledging both a split of circuit authority on the issue, and that it was a matter of first impression in the Eighth Circuit, the opinion nonetheless concluded that the STA does not forbid an open-ended continuance based on an ends-of-justice finding pursuant to 18 U.S.C. § 3161(h)(7)(A). App. at 20-24.

9. Petitioner thereafter filed a timely petition for rehearing *en banc*. On 22 September 2025, the court of appeals issued an order denying the petition for rehearing *en banc*. App. at 64.

10. On 3 December 2025, a justice of this Court granted Petitioner's timely application for an extension of the time to file this Petition for Writ of Certiorari until today, 19 February 2026. App. at 65.

### **Argument In favor of Granting the Petition**

This Court should accept review because the opinion of the court of appeals directly conflicts with cases from at least two of its sister circuits, revealing a decades-old, deep-rooted split of circuit authority on the requirements of a federal law that controls every criminal case in the nation. That stubborn split of authority will not be resolved without this Court's intervention, and the opportunities to tackle it have been fleeting. This case presents the perfect vehicle for resolution of the issue.

As presented to the court of appeals, the question was whether a string of delays in the district court had violated Petitioner's rights under the STA. The most salient delay in the district court, and the one considered controlling by the court of appeals, was triggered by the district court's grant of Petitioner's motion for the appointment of new counsel. That ruling was accompanied by the district court's finding that new counsel might need time to prepare additional pretrial motions. The court made no ends-of-justice findings at the time of its order, and issued no order scheduling any deadlines for filing new motions, or for additional hearings, or for a trial. Forty days then passed until Petitioner's new counsel filed a motion seeking leave to file additional pretrial motions. One of those motions was a motion to dismiss for a violation of the STA based on a myriad of pretrial

delays. In its ruling on the motion, the district court made after-the-fact, ends-of-justice findings regarding the open-ended, forty-day delay that was interrupted only by defense counsel’s request to file additional motions.

On appeal, after a rudimentary consideration of the law in the other circuits, the court of appeals concluded that the period of delay was excludable under the STA, but acknowledged the entrenched split of circuit authority that it joined with its opinion: “Our sister circuits have split over whether a district court may grant an open-ended continuance under § 3161(h)([7])(A).” App. at 20 (quoting *United States v. Westbrook*, 119 F.3d 1176, 1187 (5th Cir. 1997)). Indeed, they have been split on this question of statutory interpretation for more than 30 years. On one side – now joined by the Eighth Circuit – are the First, Third, Fifth, Tenth, and Eleventh Circuits. On the other, since the early 90s, both the Second and the Ninth Circuits have concluded that ends-of-justice continuances must be limited in time to be excludable under the STA. A student Comment from the University of Chicago Law Review described it, even then, as “intractable”:

The most intractable question surrounding the ends-of justice continuance, however, is whether such a continuance may be open-ended in duration. Because neither the text nor the legislative history of the statute explicitly addresses the issue, it has proven to be a particularly difficult problem for courts to resolve.

Greg Ostfeld, Comment, *Speedy Justice and Timeless Delays: The Validity of Open-Ended “Ends-of-Justice” Continuances Under the Speedy Trial Act*, 64 U.

Chi. L. Rev. 1037, 1041 (1997). Twenty-nine years after that observation, very little has changed, and the question remains stubbornly intractable.

One of the first circuit opinions to address the issue, more than forty years ago, was *United States v. Rush*, 738 F.2d 497 (1st Cir. 1984). In *Rush*, the First Circuit grappled with how to interpret the provision to avoid permitting such continuances to swallow the speedy-trial rule, while still granting district courts the flexibility needed in complex cases: “it is *generally preferable* to limit a continuance to a definite period for the sake of clarity and certainty; but at the same time it is inevitable that in some cases, like the present one, a court is forced to order an (h)(7) continuance without knowing exactly how long the reasons supporting the continuance will remain valid.” *Id.* at 508 (emphasis added).<sup>1</sup> While it found no violation of the STA in that case, the court did at least in *dicta* recommend the adoption of a “reasonableness limitation”: “It may well be that some sort of reasonableness limitation is appropriate to prevent continuances from delaying trials unfairly and circumventing the dismissal sanctions in the Speedy Trial Act.” *Id.*

Eight years later, the Third Circuit succinctly held in *United States v. Lattany*, 982 F.2d 866 (3d Cir. 1992) that “[o]pen-ended continuances are not prohibited by the Act.” *Id.* at 883. But it too rested its conclusion on an assumption of reasonableness: “We think such continuances can be reconciled

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<sup>1</sup> The Act was amended in 2008, and the ends-of-justice subsection was renumbered from § 3161(h)(8) to § 3161(h)(7). This Petition uses the current numbering to avoid confusion.

with the Speedy Trial Act provided they are not permitted to continue for an unreasonably long period of time.” *Id.* at 881.

The Fifth Circuit, in an opinion issued three years later, invoked the limitation of reasonableness to reverse the district court in *United States v. Jones*, 56 F.3d 581 (5th Cir. 1995), based on its conclusion that, “under the rather extreme circumstances of this particular case, the open-ended continuance silently granted by the district court constitutes an abuse of the Speedy Trial Act.” *Id.* at 584–85. It nonetheless expressly left open the possibility of open-ended continuances that comply with the STA’s requirements provided they are “adequately justified”: “We do not mean to suggest, however, that a district court never has the authority to grant an open-ended continuance, merely that such a continuance for any substantial length of time is extraordinary and must be adequately justified by the circumstances of the particular case.” *Id.* at 585–86.

The Tenth Circuit, in *United States v. Spring*, 80 F.3d 1450 (10th Cir. 1996), agreed that specific ending dates for a continuance are “preferable,” but found that “there will be *rare* cases where that is not possible, and an open-ended continuance for a *reasonable* time period is permissible. This is such a case.” *Id.* at 1458 (emphasis added).

The Eleventh Circuit soon followed suit, recognizing that “[a]n open-ended continuance may be granted to serve the ends of justice.” *United States v. Twitty*, 107 F.3d 1482, 1489 (11th Cir. 1997). It nonetheless appears to have completely discarded the notion of a “reasonableness” limitation in holding that “[i]f the trial

court determines that the ‘ends of justice’ require the grant of a continuance, and makes the required findings, *any* delay is excludable under § 3161(h)([7])(A) of the Speedy Trial Act.” *Id.*

By contrast, the Second and Ninth Circuits have concluded that ends-of-justice continuances must be limited in time. The Ninth Circuit was the first to address a related issue, in a case that predated the *Rush* opinion from the First Circuit. In that case, *United States v. Pollock*, 726 F.2d 1456 (9th Cir. 1984), even though the continuances at issue were not open-ended (they rather over-lapped), the court concluded “that an ‘ends of justice’ extension under section 3161(b) is proper only if ordered for a specific period of time and justified on the record with reference to the factors enumerated in section 3161(h)([7])(B).” *Id.* at 1461. The *Pollock* Court emphasized that “[t]he ‘ends of justice’ exclusion was not . . . meant to be a general exclusion for every delay no matter what its source, but was to be based on specific underlying factual circumstances. *Id.*

Six years later, in *United States v. Jordan*, 915 F.2d 563 (9th Cir. 1990), the Ninth Circuit doubled down, and held as follows:

The Speedy Trial Act thus requires that an “ends of justice” continuance be specifically limited in time and that there be findings supported by the record to justify each “ends of justice” continuance. Otherwise one early “ends of justice” continuance could exempt the entire case from the requirements of the Speedy Trial Act altogether, and open the door for wholly unnecessary delays in contravention of the Act's purpose.

*Id.* at 565-66.

The Second Circuit agreed with this holding in a complex Mafia prosecution, *United States v. Gambino*, 59 F.3d 353 (2d Cir. 1995), observing that “[w]ere Gambino's trial postponed to the next millennium the proof would still be complex. The length of an exclusion for complexity *must be not only limited in time, but also reasonably related to the actual needs of the case.*” *Id.* at 358 (emphasis added).

The opinion of the court of appeals below, without much analysis, joined those circuits that have recognized the excludability of open-ended continuances under the STA: “we agree with the majority of our sister circuits that open-ended continuances may be *necessary* in some cases.” App. at 22 (emphasis added). The opinion failed to explain why an open-ended continuance was “necessary” in *this* case, but it also added the requirement that such continuances must be reasonable: “open-ended continuances to serve the ends of justice are not prohibited if they are reasonable in length.” App. at 23. It made no mention, however, of the limitation expressed by some courts, that such continuances will be reserved for “rare” cases: “while it is preferable to set a specific ending date for a continuance, there will be rare cases where that is not possible.” *United States v. Spring*, 80 F.3d 1450, 1458 (10th Cir. 1996)).

The court of appeals opinion summarily concluded that the duration of the open-ended continuance here was “reasonable”: “On this record, we conclude that 40 days was a reasonable time period.” App. at 23. “Reasonable,” and “necessary,”

however, are both amorphous conclusions without any concrete limitation that find no support in the text of the statute, and no express limitation either:

Unfortunately, the STA conspicuously fails to specify whether there is a time limit requirement for ends-of-justice continuances. It fails to address whether judges may issue open-ended continuances in cases where the trial judge is unable to determine precisely how long the ends-of-justice exclusion should last. The text of the statute does not speak directly to the issue of open-ended continuances. The legislative history, which offers contradictory policy statements and countervailing judicial interests, only offers limited guidance. As a matter of policy, the STA contains a competing set of goals; while strict time limits deter crime and reduce recidivism, ends-of-justice continuances provide courts with needed flexibility when delaying a trial is in the public interest.

Ostfeld, 64 U. Chi. L. Rev., at 1038.

With the dual caveats of “necessity” and “reasonableness,” the opinion of the court of appeals has therefore joined those circuits that have concluded that open-ended, ends-of-justice continuances are excludable under the STA. This case provides the Court with the very rare opportunity to address this question head on. For decades, the STA has been interpreted quite strictly in some of the most populous states of the nation, while vast swaths of the country in other jurisdictions provide such loose guidance that open-ended continuances are effectively permitted to circumvent the protections to defendants and the public that the STA was enacted to provide.

This case, which presents a relatively commonplace set of circumstances, provides the Court with the perfect vehicle to craft an opinion that provides real guidance to the district courts of the nation regarding the limitations of such excludable time under the STA and the circumstances that might truly warrant

it. Considering that most of the circuit courts of appeals already have joined the fray, the opportunity for the Court to resolve this intractable split of authority may not rise again for a very long time.

### **Conclusion**

For the foregoing reasons, Petitioner respectfully requests that the Court grant this petition for certiorari.

Dated: 19 February 2026

Respectfully submitted,

*/s/ Daniel L. Gerdts*

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