

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 23 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: REGINALD SMITH,

No. 20-73723

REGINALD SMITH,

D.C. No.

2:19-cr-00213-JAM-1

Petitioner,

MEMORANDUM*

v.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA, SACRAMENTO,

Respondent,

UNITED STATES OF AMERICA,

Real Party in Interest.

Petition for Writ of Mandamus

Submitted March 18, 2021**

San Francisco, California

Before: MURGUIA and CHRISTEN, Circuit Judges, and LYNN,** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Barbara M. G. Lynn, Chief United States District Judge

Defendant Reginald Smith was arrested on August 7, 2019, and on December 5, 2019, was indicted by a federal grand jury for possession with intent to distribute methamphetamine, 21 U.S.C. § 841(a)(1), (b)(1)(B), and possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c). A magistrate judge ordered Smith detained pending trial due to Smith’s history of substance abuse and violent crime. During the period Smith has been in custody, on numerous occasions time has been excluded for the purpose of calculating the period by which Smith must be brought to trial under the Speedy Trial Act.

On August 25, 2020 Smith filed a motion to dismiss the charges against him alleging a violation of his speedy trial rights. The district court denied Smith’s motion and excluded time from the speedy trial clock pursuant to 18 U.S.C. § 3161(h)(7)(A)—the Speedy Trial Act’s ends of justice provision—from October 14, 2020, the date of the order denying Smith’s motion, until June 7, 2021, the date of Smith’s trial, because the district court could not safely conduct a jury trial until then.¹ Smith petitions this Court for mandamus relief and requests that we direct the United States District Court for the Eastern District of California to dismiss Smith’s

for the Northern District of Texas, sitting by designation.

¹ In response to the COVID-19 pandemic, the Eastern District of California suspended all jury trials on March 17, 2020. *See* E.D. Cal. General Order 611 (Mar. 17, 2020). Jury trials remain suspended “until further notice.” *See* E.D. Cal. General Order 618 (May 13, 2020).

case with prejudice because he is purportedly being held after his speedy trial clock has expired. We have jurisdiction under 28 U.S.C. § 1651, and we deny Smith’s petition.

“The remedy of mandamus is a drastic one.” *Bauman v. U.S. Dist. Court*, 557 F.2d 650, 654 (9th Cir. 1977). A petitioner must demonstrate “exceptional circumstances amounting to a judicial usurpation of power” to obtain this remedy. *Id.* (internal quotation marks and citation omitted). To determine whether a writ of mandamus is warranted, we look to the following factors: (1) whether the petitioner has “no other adequate means, such as a direct appeal, to attain the relief he or she desires”; (2) whether the petitioner “will be damaged or prejudiced in a way not correctable on appeal”; (3) whether “[t]he district court’s order is clearly erroneous as a matter of law”; (4) whether the district court’s order makes an “oft-repeated error, or manifests a persistent disregard of the federal rules”; and (5) whether “[t]he district court’s order raises new and important problems,” or legal issues of first impression. *Id.* at 654–55. While “[n]ot every factor need be present at once . . . the absence of the third factor, clear error, is dispositive.” *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court*, 408 F.3d 1142, 1146 (9th Cir. 2005). A finding of clear error requires a “firm conviction” that the district court misinterpreted the law, *In re Cement Antitrust Litig.*, 688 F.2d 1297, 1306–07 (9th Cir. 1982), or committed a

“clear abuse of discretion,” *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380 (2004) (internal quotation marks and citation omitted).

The district court did not clearly err in continuing Smith’s trial and excluding time under the Speedy Trial Act on its own. The Speedy Trial Act directs district courts to consider the factors listed in § 3161(h)(7)(B), “among others,” in determining whether “the ends of justice served by [granting a continuance] outweigh the best interests of the public and the defendant in the speedy trial.” 18 U.S.C. § 3161(h)(7)(A). These factors include:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Id. § 3161(h)(7)(B).

The district court conducted a proper individualized balancing of these factors and found that the need for a continuance outweighed Smith’s and the public’s interests in a speedy trial. The court explained that “[b]ecause § 3161(h)(7)(A) requires this balancing to be case-specific, the Court cannot, and does not, find that considerations surrounding COVID-19’s impact on public safety and the Court’s operations will, in every case, outweigh the best interest of the defendant and the public in a speedy trial.” But in this case, the district court determined that the COVID-19 pandemic specifically affected the court’s ability to conduct an in-person trial and that the trial could not safely occur in Sacramento before some time in 2021. Concluding that dismissal of the indictment for violation of the Act “would be likely to make a continuation of [Smith’s] case impossible,” the court found that an ends of justice continuance was warranted. *See id.* § 3161(h)(7)(B)(i). The court further found the relative non-complexity of the case to weigh in favor of Smith and found the pre-indictment delay and competency of counsel factors to be neutral. *See id.* § 3161(h)(7)(B)(ii)–(iv). The court also considered several non-statutory factors and concluded that those factors weighed in favor of granting an ends of justice continuance.²

² Smith also appears to argue that the district court erred in denying his motion because it was not impossible to hold a jury trial. We reject this argument as it is

Because the district court did not err, we need not address the remaining *Bauman* factors. *See Burlington*, 408 F.3d at 1146 (“[T]he absence of the third factor, clear error, is dispositive.”). In any event, the district court’s order did not “manifest a persistent disregard of the federal rules” nor did it raise legal issues of first impression. *Bauman*, 557 F.2d at 655.³

PETITION DENIED.

based on an erroneous reading of the Speedy Trial Act’s ends of justice provision. *See United States v. Olsen*, ___ F. 3d ___, No. 20-50329, at 24 (9th Cir. 2021) (per curiam).

³ Smith does not appear to challenge the district court’s ruling on his Sixth Amendment claim. Regardless, we conclude the district court properly evaluated the *Barker v. Wingo* factors and correctly found that Smith failed to carry his burden to demonstrate a Sixth Amendment violation. *See* 407 U.S. 514, 530 (1972).