#### Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

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#### BLOATE v. UNITED STATES

# CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 08-728. Argued October 6, 2009—Decided March 8, 2010

The Speedy Trial Act of 1974 (Act) requires a criminal defendant's trial to commence within 70 days of his indictment or initial appearance, 18 U. S. C. §3161(c)(1), and entitles him to dismissal of the charges if that deadline is not met, §3162(a)(2). As relevant here, the Act automatically excludes from the 70-day period "delay resulting from ... proceedings concerning the defendant," 18 U.S.C.A. §3161(h)(1) (hereinafter subsection (h)(1)), and separately permits a district court to exclude "delay resulting from a continuance" it grants, provided the court makes findings required by §3161(h)(7) (hereinafter subsection (h)(7)). Petitioner's indictment on federal firearm and drug possession charges started the 70-day clock on August 24, 2006. After petitioner's arraignment, the Magistrate Judge ordered the parties to file pretrial motions by September 13. On September 7, the court granted petitioner's motion to extend that deadline, but on the new due date, September 25, petitioner waived his right to file pretrial motions. On October 4, the Magistrate Judge found the waiver voluntary and intelligent. Over the next three months, petitioner's trial was delayed several times, often at petitioner's instigation. On February 19, 2007—179 days after he was indicted—he moved to dismiss the indictment, claiming that the Act's 70-day limit had elapsed. In denying the motion, the District Court excluded the time from September 7 through October 4 as pretrial motion preparation time. At trial, petitioner was found guilty on both counts and sentenced to concurrent prison terms. The Eighth Circuit affirmed the denial of the motion to dismiss, holding that the period from September 7 through October 4 was automatically excludable from the 70-day limit under subsection (h)(1).

Held: The time granted to prepare pretrial motions is not automatically

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excludable from the 70-day limit under subsection (h)(1). Such time may be excluded only when a district court grants a continuance based on appropriate findings under subsection (h)(7). Pp. 6–18.

(a) The delay at issue is governed by subsection (h)(1)(D) (hereinafter subparagraph (D)), the enumerated category that renders automatically excludable "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion." This provision communicates Congress' judgment that pretrial motion-related delay is automatically excludable only from the time a pretrial motion is filed through a specified hearing or disposition point, and that other pretrial motion-related delay is excludable only if it results in a continuance under subsection (h)(7). This limitation is significant because Congress knew how to define the boundaries of subsection (h)(1)'s enumerated exclusions broadly when it so desired. Although the period of delay the Government seeks to exclude in this case results from a proceeding governed by subparagraph (D), that period precedes the first day upon which Congress specified that such delay may be excluded automatically and thus is not automatically excludable. Pp. 7-10.

(b) This analysis resolves the automatic excludability inquiry because "[a] specific provision" (here, subparagraph (D)) "controls one[s] of more general application" (here, subsections (h)(1) and (h)(7)). Gozlon-Peretz v. United States, 498 U.S. 395, 407. A contrary result would depart from the statute in a manner that underscores the propriety of this Court's approach. Subsection (h)(1)'s phrase "including but not limited to" does not show that subsection (h)(1) permits automatic exclusion of delay related to an enumerated category of proceedings, but outside the boundaries set forth in the subparagraph expressly addressed to that category. That would confuse the illustrative nature of the subsection's list of categories with the contents of the categories themselves. Reading the "including but not limited to" clause to modify the contents of each subparagraph in the list as well as the list itself would violate settled statutory construction principles by ignoring subsection (h)(1)'s structure and grammar and in so doing rendering even the clearest of the subparagraphs indeterminate and virtually superfluous. See generally id., at 410. Subsection (h)(1)'s context supports this Court's conclusion. Subsection (h)(7) provides that delay "resulting from a continuance granted by any judge" may be excluded, but only if the judge finds that "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial," and records those findings. In setting forth the statutory factors justifying a subsection (h)(7) continuance, Congress twice recognized the importance of ade-

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quate pretrial preparation time. See §§3161(h)(7)(B)(ii), 3161(h)(7)(B)(iv). The Court's determination that the delay at issue is not automatically excludable gives full effect to subsection (h)(7), and respects its provisions for excluding certain types of delay only where a district court makes findings justifying the exclusion. The Court's precedents also support this reading of subsection (h)(1). See Zedner v. United States, 547 U. S. 489, 502. Pp. 10–16.

- (c) The Act does not force a district court to choose between rejecting a defendant's request for time to prepare pretrial motions and risking dismissal of the indictment if preparation time delays the trial. A court may still exclude preparation time under subsection (h)(7) by granting a continuance for that purpose based on recorded findings. Subsection (h)(7) provides "[m]uch of the Act's flexibility," Zedner, 547 U. S., at 498, giving district courts "discretion . . . to accommodate limited delays for case-specific needs," id., at 499. The Government suggests that a district court may fail to make the necessary subsection (h)(7) findings, leading to a windfall gain for a defendant who induces delay beyond the 70-day limit. But dismissal need not represent a windfall. If the court dismisses the charges without prejudice, the Government may refile charges or reindict. In ruling on a motion to dismiss under the Act, the district court should consider, inter alia, the party responsible for the delay. Pp. 16–18.
- (d) This Court does not consider whether any of the Act's other exclusions would apply to all or part of the September 7 through October 4 period that is not automatically excludable under subsection (h)(1). P. 18.

534 F. 3d 893, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, GINSBURG, and SOTOMAYOR, JJ., joined. GINSBURG, J., filed a concurring opinion. ALITO, J., filed a dissenting opinion, in which BREYER, J., joined.