

No. 21-125

In the Supreme Court of the United States

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AUSTIN CODA, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT

—————
*ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT*

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PETITION FOR A WRIT OF CERTIORARI

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Team 37
Counsel for Petitioner

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III. Questions Presented

Does preindictment delay that causes the accused actual prejudice violate the Fifth Amendment to the United States Constitution where there is no evidence of bad faith on the part of the government?

Does admission of an accused's post-arrest but pre-Miranda and pre-interrogation silence as substantive evidence of guilt violate the Fifth Amendment to the United States Constitution?

IV. Statement of the Case

Petitioner Austin Coda owned a hardware store in Plainview, East Virginia, from which he conducted business with residents of both North Carolina and East Virginia. R. at 1. Coda opened his store in 2002 and gained a large customer base; however, after the opening of a competing large chain store in 2009, Coda's profits decreased significantly, leaving him unable to pay for proper upkeep of his building. R. at 1. On December 22, 2010, an explosion occurred at Coda's store, destroying it; upon investigation by agents of the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF), the cause of the explosion was determined to be a gas line leak. R. at 2.

After the conclusion of the ATF agents' investigation, Sam Johnson, Coda's neighbor, informed the Federal Bureau of Investigation that Coda's personal and business finances were performing poorly, that Coda maintained an insurance policy on the total loss of the hardware store, and that Coda seemed "anxious and paranoid" shortly before the explosion. R. at 2. The FBI then hypothesized that Coda may have been responsible for the explosion and informed the United States Attorney's Office. R. at 2. The U.S. Attorney's Office marked Coda's case as "low-priority" because of a prioritization of drug cases by the Office and because of the

inconvenience attached to transporting Coda. R. at 2. The Office additionally experienced high turnover rate and Coda's case was shuffled from Assistant U.S. Attorney to Assistant U.S. Attorney, stopping the progression of Coda's case. R. at 2.

In April 2019, an Assistant U.S. Attorney alerted the Office that the statute of limitation on Coda's case was about to run, and the government took Coda into custody. R. at 2-3. After Coda was arrested, an FBI special agent informed Coda of the charges against him; before Coda was informed of his *Miranda* rights, he remained silent. R. at 7. The government indicted Coda under 18 U.S.C. § 844(i), which prohibits the malicious use of explosives to destroy property affecting interstate commerce. R. at 3.

The government did not indict Coda of destroying his store to claim insurance proceeds until May 2019, almost ten years after the incident occurred. R. at 3. During the evidentiary hearing, Coda testified that he was in New York at the time of the explosion; however, Coda was unable to produce proof of this because the witnesses to his travel to New York were either deceased or diagnosed with dementia in the time between the incident and the government's indictment of Coda. R. at 3. The bus which Coda states he took to New York also does not keep records from longer than three years ago. R. at 3.

Coda moves to dismiss the indictment on the basis that the government's preindictment delay violated the Fifth Amendment's Due Process Clause. R. at 3.

V. Argument

A. The government's preindictment delay—brought about by political concerns and which prejudiced Coda's case—violates the Fifth Amendment's Due Process Clause

The Supreme Court suggested in *United States v. Marion* that preindictment delay which affects the ability of the defendant to have a fair trial would be grounds for dismissal of charges

against the defendant. *See United States v. Marion*, 404 U.S. 307, 324-25 (1971). The Supreme Court implicitly underscored a balancing test to determine whether a particular preindictment delay warrants dismissal. *See United States v. Lovasco*, 431 U.S. 783, 790 (1977). The Supreme Court only explicitly made an exception for delays brought about by active investigation. *Id.* at 796; *see United States v. Burks*, 316 F. Supp. 3d 1036, 1042 (M.D. Tenn. 2018).

In this case, the government was not under active investigation of Coda's situation during the span of their delay. R. at 2. Rather, the government had marked Coda's file as its lowest priority level and, due to political concerns, shunted Coda's case, only bringing attention back to it because the statute of limitation was about to expire. *Id.*

Under the dicta of both Supreme Court rulings in *Marion* and *Lovasco*, the government's failure to provide Coda with a timely process removes its defense to its violations of Coda's Fifth Amendment Due Process right.

B. The government's admission of Coda's silence after his arrest but before the reading of his *Miranda* rights is a violation of his Fifth Amendment rights.

The Supreme Court has held that pre-*Miranda* silence is inadmissible as evidence of guilt. *Doyle v. Ohio*, 426 U.S. 610, 616-620 (1976). While pre-custodial silence and post-*Miranda* silence may be admissible as evidence of guilt, silence before the reading of *Miranda* rights may not be, regardless of whether the silence is in answer to charges or to an interrogation. *Salinas v. Texas*, 570 U.S. 178, 186-91 (2013); *Brecht v. Abrahamson*, 507 U.S. 619, 622-23 (1993); *see United States v. Moore*, 104 F.3d 377, 385 (D.C. Cir. 1997).

In this case, Coda's silence falls squarely in the pre-*Miranda* area. R. at 7. After he was held in custody, he was spoken to by an FBI special agent, who only *after* his silence, read him his *Miranda* rights. *Id.* The answer to which Coda maintained his silence is of no issue under the current Supreme Court decisions.

Thus, the government's use of Coda's pre-*Miranda* silence against him in evidence violates his Fifth Amendment rights.

X. Conclusion

For the foregoing reasons, Mr. Coda respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals for the Thirteenth Circuit.

DATED this 13th day of September, 2021.

Respectfully submitted,

Team 37
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