Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 04-02

KAQUIFAH, ET AL. *v*. UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[April 19, 2023]

PER CURIAM.

"[O]ur cases establish, at a minimum, that criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt." *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 56 (1987). "There is a significant difference between the Compulsory Process Clause weapon and the other rights protected by the Sixth Amendment—its availability is dependent entirely on the defendant's initiative." *Taylor* v. *Illinois*, 484 U. S. 400, 410 (1988).

Barker v. *Wingo*, 407 U. S. 514 (1972) lays out a clear set of parameters in speedy trial cases like this one: "[l]ength of delay, the reason for delay, the defendant's assertion of his right, and prejudice to the defendant." *Id*., at 530 (footnote omitted). The Sixth Amendment guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy. . . trial. . ." On its face, the Speedy Trial Clause is written with such breadth that, taken literally, it would forbid the government to delay the trial of an "accused" for any reason at all. Our cases, however, have qualified the literal sweep of the provision by specifically recognizing the

relevance of four separate enquiries: whether delay before trial was uncommonly long, whether the government or the criminal defendant is more to blame for that delay, whether, in due course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay's result. See *Barker*, *supra*, at 530.

The first of these is actually a double enquiry. Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from "presumptively prejudicial" delay, 407 U. S., at 530–531, since, by definition, he cannot complain that the government has denied him a "speedy" trial if it has, in fact, prosecuted his case with customary promptness. If the accused makes the showing, the court must then consider, as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim. See *id*., at 533–534. This latter enquiry is significant to the speedy trial analysis because, as we discuss below, the presumption that pretrial delay has prejudiced the accused intensifies over time.[1]

As for *Barker*'s second criterion, the Government claims to have sought Petitioner to the contrary, however, and we review trial court determinations of negligence with considerable deference. See *Cooter & Gell* v. *Hartmarx Corp*., 496 U. S. 384, 402 (1990); *McAllister* v. *United States*, 348 U. S. 19, 20–22 (1954); 9 C. Wright & A. Miller, Federal Practice

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[1]Depending on the nature of the charges, the lower courts have generally found post accusation delay "presumptively prejudicial" at least as it approaches one year. See 2 W. LaFave & J. Israel, Criminal Procedure, sec. 18.2, p. 405 (1984); Joseph, Speedy Trial Rights in Application, 48 Ford. L. Rev. 611, 623, n. 71 (1980) (citing cases). We note that, as the term is used in this threshold context, "presumptive prejudice" does not necessarily indicate a statistical probability of prejudice; it simply marks the point at which courts deem the delay unreasonable enough to trigger the *Barker* enquiry. Cf. Uviller, *Barker* v. *Wingo*: Speedy Trial Gets a Fast Shuffle, 72 Colum. L. Rev. 1376, 1384–1385 (1972).

and Procedure, sec. 2590 (1971). The Governemtn gives us nothing fatal to them in the record.

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We have observed in prior cases that unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired." *Barker*, 407 U. S., at 532; see also *Smith* v. *Hooey*, 393 U. S. 374, 377–379 (1969); *United States* v. *Ewell*, 383 U. S. 116, 120 (1966).

Barker made it clear that "different weights [are to be] assigned to different reasons" for delay. *Ibid*. Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun. And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows.

Thus, our toleration of such negligence varies inversely with its protractedness, cf. *Arizona* v. *Youngblood*, 488 U. S. 51 (1988), and its consequent threat to the fairness of the accused's trial. Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the Government's fault and simply encourage the government to gamble with the interests of criminal suspects assigned a low prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.

We have long identified the "major evils" against which the Speedy Trial Clause is directed as "undue and oppressive incarceration" and the "anxiety and concern accompanying public accusation." *United States* v. *Marion*, 404 U. S. 307, 320 (1971).

The criminal justice system of the United States is designed to fulfil three basic purposes: retribution, incapacitation, and deterrence. See *Miller* v. *Alabama*, 567 U. S. ___, ___ (Roberts, C.J., dissenting) (slip op., at 3). If punishment is imposed upon those who are not truly guilty, these purposes are evaded. For that reason, our Constitution guarantees to defendants several, admittedly tedious, protections. Among these is the right "to be heard," which the Court has held "applies equally to criminal, as it does to civil proceedings." *Hagar* v. *Reclamation Dist.*, 111 U. S. 701, 708 (1884).

A defendant does not strictly have to be present at their trial, but they must be given an "opportunity" to be. *Hagar*, *supra*. This is settled law and not a debatable point. The nuance here lies in the question of what degree of opportunity must they be afforded.

The Court held previously in *Crosby* v. *United States*, 506 U. S. 255 (1993), that while a defendant is entitled the right to be present at their trial, certain actions constitute a "knowing and voluntary waiver" of that right. *Id.*, at 261. While the *Crosby* Court stated specifically that "midtrial flight" should be treated as a voluntary waiver, there are numerous other forms. *Ibid*. For example, a defendant makes a voluntary waiver of their right to be present if they engage in "disruptive conduct." *Illinois* v. *Allen*, 397 U. S. 337, 346 (1970).

In the case of *Allen*, the respondent therein had been convicted in the Illinois state courts of armed robbery and was sentenced to a 30-year prison term, with parole eligibility at 10. His conviction was affirmed by the Illinois Supreme Court, and this Court declined certiorari. He petitioned the

federal district court for habeas corpus, arguing he had been deprived of his right to be present by his trial judge; the district court denied this petition, but was reversed by the Court of Appeals. Allen had been removed from the courtroom by his Illinois trial judge because he had made several abusive and threatening remarks towards the judge and other persons present in the courtroom. This, the Court held, in reversing the Court of Appeals, could not be conduct allowed in a courtroom, saying that "if our courts are to remain what the Founders intended, the citadels of justice, their proceedings cannot and must not be infected with the sort of scurrilous, abusive language and conduct paraded before the Illinois trial judge in this case." *Id.*, at 347. They concluded that the decision to exclude Allen from his trial was properly made because he had made the requisite voluntary waiver by way of his conduct, not necessarily any express statement.

The onerous duty of balancing the rights of a defendant, who is guaranteed the privilege of being "confronted with the witnesses against him," and the core interests of the criminal justice system often befalls this Court. *Crawford* v. *Washington*, 541 U. S. 36, 40 (2004). For example, in the *Crosby* case, the Court held that "Federal Rule of Criminal Procedure 43 [does not] permit the trial in absentia of a defendant who absconds prior to trial and is absent at its beginning." *Id.*, at 256. The petitioner (in *Crosby*) was not present at the beginning of the trial and was therefore improperly tried because Rule 43 provided only for the absence of a defendant 'after the trial had begun.'

Rule 43—itself a restatement of existing law—was issued in 1946 to codify several exceptions and applied nuance created by earlier decisions of this Court. In *Hopt* v. *Utah*, 110 U. S. 574 (1884), we said that "the legislature has found it essential to the protection of one whose life or liberty is involved in a prosecution for felony that he shall be personally present at the trial; that is at every stage of the trial when

his substantial rights may be affected by the proceedings against him." *Id.*, at 579. The codified Rule 43 created several notable exceptions to *Hopt*, including the voluntary waiver exception and the midtrial flight exception.

This is a significant departure from this Court's developed jurisprudence, because "our cases recognize that the right to personal presence at all critical stages of the trial" is a "fundamental right of each defendant." *Rushen* v. *Spain*, 464 U. S. 114, 117 (1983). We briefly discussed earlier that a person does not "strictly have to be present at their trial," but that they must be "given an 'opportunity' to be." *Ante*, at 61. This is the law despite the seemingly unequivocal declaration in *Rushen* that the right to be personally present is fundamental. This is a result of Rule 43. It is consistent with the recurring jurisprudence of this Court that fundamental rights may be permissibly burdened if "justified by a compelling government interest," if the burden is "narrowly based, and thus not overbroad," and if only the "least restrictive means" is employed. *Ibid.*

Our system of justice is designed to ensure that every defendant, no matter if they face minor charges, or the most serious of charges, is entitled to a fair trial. Fulfilment of every protection, every procedural nuance, is the only way this system of fairness can be maintained. In this case, numerous of these protections were denied, and nuances forgotten. Our mandate to protect these rights is clear; the judgment below is vacated.

It is so ordered.