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# The Direction of the Speedy Trial Right in the Time of COVID-19

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## A Bit of Direction for this Paper



*Speed is irrelevant if you are going in the wrong direction.*
—Mahatma Gandhi

## 1. TLDR: Too Soon to Tell

Because the Texas Court of Criminal Appeals (CCA) does not find denial of a Speedy Trial a cognizable ground for a pretrial writ of habeas corpus or a writ of mandamus, a Speedy Trial complaint cannot be made until after trial on direct appeal.[1] During the worldwide COVID-19 pandemic, Texas allowed limited jury trials upon request by a trial judge to the Texas Office of Court Administration (OCA) with a detailed, specific plan for courtroom safety. Although trial courts are still expected to conduct jury trials with COVID-19 safety precautions in mind, currently jury trials have not required case-by-case approval from OCA. The backlog of criminal jury trial cases is significant.

[1] The CCA decided in *Smith v. Gohmert*, 962 S.W.2d 590 (Tex. Crim. App. 1998), that Speedy Trial relief is not available via either a pretrial writ of habeas or writ of mandamus. But I have some thoughts about that so don't touch that dial.

The OCA reported that Texas district courts had 191,897 cases pending disposition as of January 1, 2020.[2] The United States effectively went on lockdown in March of 2020. During 2020, the district courts had 204,914 cases added to their dockets. For comparison, in 2019 district courts had 183,916 cases pending on the first day of that year and added 226,970 cases during 2019. In 2019 the district courts disposed of 277,848 cases, but in 2020 the district courts only disposed of 191,966 cases. The docket continued to be backlogged in 2021with 249,885 cases pending at the beginning of the year and 218,094 cases added. As of the first of this year, the district courts had 245,140 cases pending—a very slight decrease from 2021.

The lack of pretrial remedy means we probably will not see any Speedy Trial opinions from the CCA, if any, until next year. It is difficult to anticipate how the pandemic restrictions on jury trials will be considered by the CCA in the context of a Speedy Trial complaint. But if the United States Supreme Court's (SCOTUS) denial of writ as improvidently granted in *Boyer v. Louisiana*[3] is any indication…

> The record plainly shows based largely on the Louisiana Court of Appeals observation that "[t]he majority of the **seven-year delay** was caused by the 'lack of funding.'" But when this statement is read in context, what it *most likely means* is not that the delay in question was caused by the State's failure to provide funding but simply that the delay was attributable to the funding issue. And as noted, most of this delay was **caused by the many defense requests for continuances of hearings on the issue of funding**. If the defense had not sought and obtained those continuances, the trial might well have commenced at a much earlier date—and might have reached a conclusion far less favorable to the defense. . . .
> Having taken up this case on the basis of a mistaken factual premise, I agree with the Court's decision to dismiss the writ as improvidently granted.[4]

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[2] OCA has a report generator for all Texas court statistics it collects available at https://www.txcourts.gov/statistics/court-activity-database/. The statistics in this paragraph were generated by selecting "District Court Data Reports" and "District Court Activity Detail." The parameters of January through December of each year were selected to generate the reports for 2019, 2020, 2021, and Jan-Apr 2022. The complete reports can be found in the Appendix.

[3] *Boyer v. Louisiana*, 569 U.S. 238 (2013).

[4] *Id.* at 240-41 (Concurring, Alito, J.) (emphasis added).

Begging your pardon, Justice Alito, but…

"caused by the State's failure to provide funding" ≠ "attributable to the funding issue" ??

So if a state's indigent defense fund, or whatever government authority providing indigent funds, won't give you money necessary to defend your indigent client and you ask for continuances in an effort to maintain the fight for the necessary funds to defend your client, then the delay is counted against the defendant? Cool. Cool. Got it. Thank goodness for Justice Sonia Sotomayor! (I love RBG but the criminal justice bar needs to demand a Justice Sotomayor bobblehead!) In her dissent Justice Sotomayor points out that Justice Alito's reasoning contradicts *Barker v. Wingo* precedent:

> Our reasoning in *Barker*, however, requires that a delay caused by a State's failure to provide funding for an indigent's defense must count against the State, and not the accused. As noted, we held there that even a more "neutral reason" for a delay such as "overcrowded courts" should be weighed against the State, because "the ultimate responsibility for such circumstances" lies squarely with the state system as a whole. 407 U. S., at 531, 92 S. Ct. 2182, 33 L. Ed. 2d 101. Applying similar logic, we recently indicated that "[d]elay resulting from a systemic breakdown in the public defender system could be charged to the State" as well. *Vermont v. Brillon*, 556 U. S. 81, 94, 129 S. Ct. 1283, 173 L. Ed. 2d 231 (2009) (internal quotation marks and citations omitted).
> *Boyer v. Louisiana*, 569 U.S. 238, 246 (2013) (Dissenting, Sotomayor, J.).

# Title search: PreTrial Writ from Texas Jails: Pandemic Justice Delayed and Pandemic Justice Denied

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