No. 21-1441

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DRAXXION TALANDAR,

Plaintiff-Appellant,

v.

STATE OF VERMONT,

Defendant-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the District of Vermont
Case No. 2:21-CV-00010-wks, Hon. William K. Sessions III

APPELLANT DRAXXION TALANDAR'S PETITION FOR REHEARING AND REHEARING EN BANC

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February 28, 2023

Rule 35(b)(1) Statement

The panel's application of *Younger*'s irreparable-injury exception conflicts with Supreme Court precedent, *e.g.*, *Kugler v. Helfant*, 421 U.S. 117, 123-25 (1975), and past decisions of this Court, *e.g.*, *Canal Theatres, Inc. v. Murphy*, 473 F.2d 4, 6-7 (2d Cir. 1973). *See* Fed. R. App. P. 35(b)(1). If the panel denies rehearing, consideration by the full Court will be necessary to secure the uniformity of this Court's decisions. The panel decision further involves an issue of exceptional importance because it restricts this Court's jurisdiction in conflict with the decisions of other circuit courts, *see, e.g.*, *Winn v. Cook*, 945 F.3d 1253, 1261 (10th Cir. 2019). *See* Fed. R. App. P. 35(b)(1).

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Issues Presented

Plaintiff-Appellant Draxxion Talandar has been awaiting trial since December 2019. The panel affirmed the district court's decision to abstain from considering his Sixth Amendment speedy-trial claim on the ground that he did not meet the requirements for the irreparable-injury exception to *Younger v. Harris*, 401 U.S. 37 (1971).

The issues presented are (1) whether the panel misevaluated the irreparability-of-harm inquiry and misapplied the state-remedy prong of *Diamond "D" Construction Corp. v. McGowan*, 282 F.3d 191 (2d Cir. 2002), because it overlooked Talandar's demand for immediate trial, and (2) whether, alternatively, if the panel read *Diamond* correctly, *Diamond*'s reformulation of *Younger* should be abandoned by the en banc court.

Statement of the Case

In December 2019, the State of Vermont charged Talandar with sexual and domestic assault. App. 4-5. After his arraignment in January 2020, he was held without bail. *Id.* at 5.

Talandar repeatedly demanded a speedy trial. On January 31, 2020, he filed a "demand for a Speedy Trial" under the Vermont and U.S. Constitutions. App. 25. He waived other procedural rights in an effort to expedite the trial and objected to the State's motion for a continuance. *Id.* The Vermont trial court continued the trial on March 2, 2020, but recognized that Talandar had properly asserted his speedy-trial right and that the State

alone, and not Talandar, was at fault for failing to try the case. *Id.* at 25-26. The court assured the parties that the trial would take place in April 2020. *Id.* Talandar again asserted his speedy-trial rights in a motion on March 3, 2020. *Id.* at 26.

On March 16, 2020, the Vermont Supreme Court declared a "Judicial Emergency" because of COVID-19 and suspended jury trials. App. 26. Talandar renewed his speedy-trial motion in May 2020, and the Vermont trial court denied the motion in June 2020. *Id.* at 46. Talandar filed another motion in August 2020, which was denied in September 2020. *Id.* Since filing this federal lawsuit, Talandar has filed multiple state-court motions asserting his rights and demanding a speedy trial. Opening Br. 6. None has been granted. *Id.* Talandar also twice sought permission to file an interlocutory appeal, but the Vermont Supreme Court denied each request on jurisdictional grounds. *Id.* at 5-6; D. Ct. ECF 4-8 at 1.

Talandar filed a federal complaint seeking a writ of habeas corpus, a declaratory judgment that the delay of trial constituted a Sixth Amendment violation, and "any other relief as Justice and the Constitution may require." App. 8-9. The district court dismissed his claims, concluding it must abstain under *Younger v. Harris*, 401 U.S. 37 (1971). App. 44. Talandar appealed.

While his appeal was pending, in October 2021, Talandar was released and placed under house arrest. Opening Br. 6; Resp. Br. 7. He voluntarily dismissed his habeas corpus claim. Opening Br. 6.

The panel affirmed the dismissal of Talandar's declaratory judgment claim. Panel Op. 3. It noted that the irreparable-injury exception to *Younger* requires both irreparable-injury and inadequate state remedies, holding that Talandar established neither. *Id.*

Reasons for Granting Rehearing or Rehearing En Banc

I. Rehearing is warranted because the panel decision overlooked Talandar's request for an immediate trial and misapplied the irreparable-injury exception to *Younger* abstention.

Under *Diamond "D" Construction Corp. v. McGowan*, 282 F.3d 191 (2d Cir. 2002), the irreparable-injury exception to *Younger* abstention applies if (1) abstention poses a risk of "great and immediate harm" to Talandar and (2) there is "no state remedy available to meaningfully, timely, and adequately remedy" his constitutional violation. *Id.* at 201. The panel erroneously concluded Talandar satisfied neither prong. On the immediate-harm prong, the panel overlooked Talandar's request for an immediate trial. And on the state-remedy prong, the panel applied inapposite precedent.

A. The panel misevaluated Talandar's injury.

1. The panel failed to consider Talandar's request for an immediate trial.

Talandar emphasized to the panel that his requested relief included "an order to compel the state court to provide [him] with an immediate trial." Opening Br. 9-10. By concluding that Talandar's claims had "been substantially remedied" and that the threat to his rights could "be eliminated

by his defense against a single criminal prosecution," the panel demonstrated that it incorrectly believed Talandar requested only either release from detention or dismissal. Panel Op. 3.

Talandar's harms have not been "substantially remedied." Panel Op. 3. Though Talandar was placed under house arrest (after more than 20 months of detention), the injury inflicted by the speedy-trial violation extends beyond detention. *See Doggett v. United States*, 505 U.S. 647, 654 (1992). "[U]nreasonable delay between formal accusation and trial" causes manifold harms. *Id.* In addition to impairing the defense at trial, *id.*, delay "seriously interfere[s] with the defendant's liberty, whether he is free on bail or not." *United States v. Marion*, 404 U.S. 307, 320 (1971). Further, an extensive delay may "disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." *Id.* at 320. Thus, though the speedy-trial right does seek to "prevent oppressive pretrial incarceration," that is not its sole purpose. *Barker v. Wingo*, 407 U.S. 514, 532 (1972). The panel's conclusion that release was a substantial remedy, despite its own recognition that Talandar no longer sought release, Panel Op. 2 n.1, reflects a failure to grapple with the full extent of the relief Talandar requested.

Nor can the harm from the delay be fully "eliminated by" Talandar's "defense against" his future prosecution. Panel Op. 3. The sole relief he will be able to obtain is dismissal of the charges. *See, e.g.*, *Strunk v. United States*, 412 U.S. 434, 439-40 (1973); *Betterman v. Montana*, 578 U.S. 437, 444 (2016).

Dismissal will not remedy the restrictions of house arrest, the effects on Talandar's relationships and finances, the ongoing anxiety, or the other persistent harms of delay. In contrast, an immediate trial would "halt the violation," which "is becoming more severe every day." *See Winn v. Cook*, 945 F.3d 1253, 1261 (10th Cir. 2019). By assuming his defense at trial could remedy that injury, the panel failed to grasp that "[i]t is the delay before trial" itself that "offends against the constitutional guarantee of a speedy trial." *United States v. MacDonald*, 435 U.S. 850, 861 (1978).

2. A request for an immediate trial may fall within the irreparable-injury exception to *Younger*.

Under *Younger*, federal courts generally "should not enjoin a criminal proceeding in state court" unless an "an injunction is necessary to prevent immediate and irreparable injury." *Liberty Mut. Ins. Co. v. Hurlbut*, 585 F.3d 639, 646 (2d Cir. 2009); *see Diamond "D" Constr. Corp. v. McGowan*, 282 F.3d 191, 201 (2d Cir. 2002) (requiring a litigant to show they "will suffer great and immediate harm if the federal court does not intervene"). Vermont's failure to bring Talandar to trial continues to inflict harms that bring his request for an immediate trial within that exception—harms that the panel did not address.

As explained, Talandar seeks to remedy the harm caused by the State's failure to "try him with due speed." *United States ex rel. Scranton v. New York*, 532 F.2d 292, 296 (2d Cir. 1976). "To assert the denial of his speedy trial right at the trial, or on appeal, would in no way … ameliorate[] the harm." *Id.*

True, an immediate trial cannot remedy the harms Talandar suffered over the past 37 months. But it would halt ongoing harm that is otherwise irreparable, and "[a]n inability to guarantee complete relief for a constitutional violation … does not justify withholding a remedy altogether." *Williams v. Pennsylvania*, 579 U.S. 1, 16 (2016).

Further, Talandar's injury is great and immediate. He continues to suffer the consequences of delay, from the "substantial[] impairment of liberty imposed on an accused while released on bail" to "the disruption of life caused by … the presence of unresolved criminal charges." *United States v. MacDonald*, 456 U.S. 1, 8 (1982). These are the "major evils," *Marion*, 404 U.S. at 320, the speedy-trial right—one of the "most basic rights preserved by our Constitution," *Klopfer v. North Carolina*, 386 U.S. 213, 226 (1967)—safeguards against. And the violation "becom[es] more severe every day his trial is delayed." *Winn*, 945 F.3d at 1261.

Of course, "the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution" do not themselves constitute irreparable harm. *Younger v. Harris*, 401 U.S. 37, 46 (1971). But here, Talandar seeks to compel, not avoid, a trial. By definition, a trial delayed in violation of the Speedy Trial Clause is not an ordinary prosecution and thus is not the sort to which *Younger* requires deference.

For these reasons, the Supreme Court, this Court, and other circuits have indicated that federal intervention may be warranted when a defendant requests an immediate trial in state court. *See Braden v. 30th Jud. Cir. Ct. of*

Ky., 410 U.S. 484, 489-91 (1973); *Scranton*, 532 F.2d at 296; *Winn*, 945 F.3d at 1261; *In re Justs. of Superior Ct. Dep't of Mass. Trial Ct.*, 218 F.3d 11, 17 n.5 (1st Cir. 2000). In *Braden*, the Supreme Court explained that granting an immediate trial "does not jeopardize any legitimate interest of federalism" because the defendant does not seek "to abort," "disrupt," or "forestall a state prosecution." 410 U.S. at 491-92. The defendant is not "litigat[ing] a federal defense to a criminal charge" but simply "demand[ing] enforcement of the [State's] affirmative constitutional obligation to bring him promptly to trial." *Id.* at 489-90. This Court has understood that, for purposes of *Younger* abstention, *Braden* drew a distinction between a defendant seeking an "order to compel the state to try him" and a defendant seeking "to have his indictment dismissed." *See Scranton*, 532 F.2d at 296. *Younger* abstention may be avoided by the former because the harm—"that the state had refused to try him with due speed"—cannot be "ameliorated" by asserting the right at trial. *Id.* The First and Tenth Circuits have similarly recognized that federal courts may intervene when a defendant seeks an immediate trial. *Winn*, 945 F.3d at 1261; *In re Justs. of Superior Ct. Dep't of Mass. Trial Ct.*, 218 F.3d at 17 n.5.

B. The panel improperly analyzed the viability of Vermont's state-law procedures.

1. The panel misunderstood the state-remedy prong of *Diamond*.

The panel decision wrongly equated *Younger*'s threshold requirements with the considerations that inform the irreparable-injury exception. For

Younger abstention to apply in the first place, the state must offer an adequate opportunity for litigants to raise constitutional claims. The threshold requirement is formal and is satisfied when there are no "procedural barriers" to hearing the constitutional claim. *Moore v. Sims*, 442 U.S. 415, 430 (1979). For the irreparable-injury exception to apply, however, a litigant must show that, due to extraordinary circumstances, there is "no state remedy available to meaningfully, timely, and adequately remedy the alleged constitutional violation." *Diamond "D" Constr. Corp. v. McGowan*, 282 F.3d 191, 201 (2d Cir. 2002) (citing *Kugler v. Helfant*, 421 U.S. 117, 124-25 (1975)). This is not a rigid, inflexible inquiry, but a contextual one that accounts for the circumstances of the case, including the practicality of any potential remedy. *See Kugler*, 421 U.S. at 124-25 (observing that "[t]he very nature of 'extraordinary circumstances' … makes it impossible to anticipate and define every situation that might" suffice).

Here, however, the panel conflated the two inquiries. In articulating why Talandar failed to show that he qualified for the irreparable-injury exception, the panel cited only *Kirschner v. Klemons*, 225 F.3d 227 (2d Cir. 2000), a case about *Younger*'s threshold requirements. *Id.* at 234 (describing the capability of adjudication in state court as a "necessary predicate" of *Younger* abstention, not as a requirement of the irreparable-injury exception).

The two are not interchangeable. Equating the threshold adequacy requirement and the state-remedy prong of the irreparable-injury exception would preclude courts from applying the exception at all. If they were the

same, any state procedure that met the threshold requirement could never be subject to the exception.

The panel's approach is inconsistent with precedent from the Supreme Court, this Court, and other circuits. The Supreme Court has indicated that the touchstone of the irreparable-injury exception analysis is the existence of irreparable harm, not the availability of a state procedure or remedy. *See Younger v. Harris*, 401 U.S. 37, 45 (1971) (focusing on "irreparable loss"); *Kugler*, 421 U.S. at 124-25 (focusing on "great, immediate, and irreparable injury"). *Diamond*'s state-remedy prong reflects the same understanding. It looks not to whether a state procedure formally exists, but to whether a remedy is "meaningful[], timely, and adequate[]." 282 F.3d at 201. *Diamond* thus instructs that although a formal procedure may exist, the practical lack of a remedy can cause the kind of harm that renders a federal forum appropriate. *Id.*

This Court has previously read *Diamond* in this way. *Wilson v. Emond*, 373 F. App'x 98 (2d Cir. 2010), recognized that the threshold and exception analyses are separate and distinct. *Younger*'s threshold requirement was met there because nothing "precluded [the plaintiff] from pleading his constitutional claims in the state court complaint." *Id.* at 100. When considering the irreparable-injury exception's state-remedy prong, however, this Court asked whether any evidence indicated that the state court "would not fairly and fully adjudicate his claims." *Id.* The first inquiry probed formal

availability, while the second considered the opportunity for practical, meaningful relief.

Other circuits take the same approach. In *Winn v. Cook*, 945 F.3d 1253 (10th Cir. 2019), the Tenth Circuit found that, even when "the state court provides an adequate forum," extraordinary circumstances can create a "threat of 'irreparable injury' both great and immediate" that warrants federal intervention. *Id.* at 1258-59 (citation omitted); *see also Zahl v. Harper*, 282 F.3d 204, 209 (3rd Cir. 2002); *Gilliam v. Foster*, 75 F.3d 881, 903-04 (4th Cir. 1996); *Brunken v. Lance*, 807 F.2d 1325, 1331 (7th Cir. 1986); *Arevalo v. Hennessy*, 882 F.3d 763, 765-66 (9th Cir. 2018); *Rowe v. Griffin*, 676 F.2d 524, 525 (11th Cir. 1982).

As noted, however, the panel erroneously conflated *Younger*'s prerequisites with the irreparable-injury exception's requirements, to Talandar's detriment. The panel should reconsider the state-remedy prong with the understanding that the irreparable-injury exception analysis is practical, not formal, and distinct from the threshold requirement.

2. Under a proper reading of *Diamond*, Talandar lacked a meaningful state remedy.

Because Talandar's injuries cannot be meaningfully remedied at or after trial, as explained above (at Part I.A), only a pre-trial avenue for relief will suffice. And neither Vermont's trial court nor Vermont's Supreme Court provides a practical pre-trial remedy.

a. Vermont trial court is not an avenue for meaningful relief. That Talandar could continue asking the trial court for a speedy-trial is not a meaningful remedy, given that Talandar's objection stems in part from the court's own delay. Outside the *Younger* context, multiple circuits have reasoned that reconsideration by a court is not a viable remedy when that court is the source of the underlying constitutional violation. In addressing a gag order unconstitutionally entered by a district court, for example, the Fourth Circuit held that a motion for reconsideration in the same court is not an "'adequate' means of attaining relief" because "[p]arties need not endure repeated and irreparable abridgments of their First Amendment rights" to give the offending court a "second chance." *In re Murphy-Brown, LLC*, 907 F.3d 788, 796 (4th Cir. 2018); *see also, e.g.*, *In re al-Tamir*, 993 F.3d 906, 910-13 (D.C. Cir. 2021) (holding that de novo reconsideration by another judge is adequate relief to address judicial bias because it "suffices to 'scrub the case of judicial bias'" (citation omitted)). Likewise, the trial court has contributed to the unconstitutional delay here, and Talandar should not have to endure continuous and irreparable abridgements of his speedy-trial right without access to a federal forum just because he formally has the option to file yet another speedy-trial motion.

Further, as a practical matter, Talandar cannot realistically expect to obtain relief from the trial court because it has repeatedly rebuffed his speedy-trial claim. *See In re BigCommerce, Inc.*, 890 F.3d 978, 982 (Fed. Cir. 2018) (observing that "reconsideration" is a "futile" remedy where a court's

prior decisions make clear that it would "likely" rule against the party seeking relief); *Cole v. U.S. Dist. Ct. for the Dist. of Idaho*, 366 F.3d 813, 820 (9th Cir. 2004); *In re Chimenti*, 79 F.3d 534, 540 (6th Cir. 1996). That Talandar theoretically could return to the tribunal that has already rejected his claim offers no meaningful relief.

b. Appeal to the Vermont Supreme Court likewise offers no meaningful remedy for Talandar's ongoing injuries. That court has indicated it lacks jurisdiction to address Talandar's pre-trial motion to dismiss on speedy-trial grounds. In Vermont, "a final judgment is a prerequisite to appellate jurisdiction unless the narrow circumstances authorizing an interlocutory appeal are present." *Hosp. Inns v. S. Burlington R.I.*, 547 A.2d 1355, 1358 (Vt. 1988). The Vermont Rules of Appellate Procedure authorize an interlocutory appeal only under Vermont's collateral-order doctrine and the state-law analog to 28 U.S.C. § 1292(b). Vt. R. App. P. 5, 5.1. The Vermont Supreme Court denied Talandar's request for permission to appeal the denial of his motion to dismiss under both authorities, and thus it lacked power to review the merits. D. Ct. ECF 4-8 at 1 (citing Vt. R. App. P. 5(b)(1), 5.1(a)).

True, Talandar has not sought interlocutory appeal of the March 2020 rejection of his request for an immediate trial. But it would not have been sensible for him to do so. Any appeal would have further delayed the trial, then anticipated in April 2020. Moreover, if he had appealed, the time that elapsed while the appeal was pending would not have contributed to the merits of his speedy-trial claim, *United States v. Loud Hawk*, 474 U.S. 302, 316

(1986), even though the additional delay would have exacerbated his injuries.

Nor does the Vermont Supreme Court provide a path for relief going forward. That court's jurisdictional bar on interlocutory appeals will prevent Talandar from appealing any future denial of a request for an immediate trial, just as it barred the appeal regarding his motion to dismiss the charges. A permissive appeal may not proceed unless the case presents "a controlling question of law about which there exists substantial ground for difference of opinion." Vt. R. App. P. 5(b)(1). The Vermont Supreme Court summarily affirmed the trial court decision concluding that the merits of Talandar's speedy-trial motion to dismiss did not present such a question under state-court precedent. D. Ct. ECF 4-8 at 1; D. Ct. ECF 4-7 at 2-3. Because the question whether a speedy-trial violation has occurred is the same in a demand for an immediate trial as it is in a motion to dismiss, the jurisdictional result would be the same.

An appeal under Vermont's collateral-order doctrine is similarly foreclosed. An interlocutory appeal cannot proceed under the collateral-order doctrine unless it resolves "an important issue completely separate from the merits of the action." D. Ct. ECF 4-7 at 4. The Vermont Supreme Court summarily affirmed the trial court's decision concluding that resolving Talandar's speedy-trial motion to dismiss was not completely separate from the merits of his prosecution. D. Ct. ECF 4-8 at 1. And again, because the same constitutional analysis applies to resolving a speedy-trial

motion to dismiss and a request for an immediate trial, an appeal of Talandar's request for an immediate trial would likewise fail to satisfy Vermont's collateral-order requirements. Because interlocutory review is not available, any appeal of Talandar's speedy-trial claim can come only after trial.

In sum, then, neither Vermont's trial court nor Vermont's Supreme Court provides a practical remedy. Talandar has established that, under *Diamond*, he qualifies for *Younger*'s irreparable-injury exception.

II. If this Court concludes that the panel correctly applied *Diamond*, it should overrule *Diamond* en banc.

En banc rehearing is appropriate when "necessary to secure or maintain uniformity of the court's decisions" or when "the proceeding involves a question of exceptional importance." Fed. R. App. P. 35(a). If this Court concludes that the panel correctly understood *Diamond*, then, as explained above (at Part I.B.1), *Diamond* effectively eliminates *Younger*'s irreparable-injury exception. That result conflicts with Supreme Court precedent, *e.g.*, *Kugler v. Helfant*, 421 U.S. 117, 123-25 (1975), contradicts other decisions of this Court, *e.g.*, *Canal Theatres, Inc. v. Murphy*, 473 F.2d 4, 6-7 (2d Cir. 1973); *Wilson v. Emond*, 373 F. App'x 98, 100 (2d Cir. 2010), and splits from other circuits, *e.g.*, *Winn v. Cook*, 945 F.3d 1253, 1258-59 (10th Cir. 2019); *Zahl v. Harper*, 282 F.3d 204, 209 (3rd Cir. 2002); *Gilliam v. Foster*, 75 F.3d 881, 903-04 (4th Cir. 1996); *Brunken v. Lance*, 807 F.2d 1325, 1331 (7th Cir. 1986); *Arevalo v. Hennessy*, 882 F.3d 763, 765-66 (9th Cir. 2018); *Rowe v. Griffin*, 676 F.2d 524,

525 (11th Cir. 1982). And other circuits have expressly concluded that a request for an immediate trial can fall within *Younger*'s irreparable-injury exception, *e.g.*, *Winn*, 945 F.3d at 1261; *In re Justs. of Superior Ct. Dep't of Mass. Trial Ct.*, 218 F.3d 11, 17 n.5 (1st Cir. 2000), a conclusion squarely at odds with the panel decision.

Further, the proper interpretation of *Younger*'s irreparable-injury exception is a matter of exceptional importance. Fed. R. App. P. 35(a)(2). This Court's "obligation" to exercise its jurisdiction is "virtually unflagging." *Colo. River Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976). "Parallel state-court proceedings do not detract from that obligation." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). And while *Younger* delineates a narrow exception to that rule, the justifications for abstaining fall away where a litigant faces a threat of injury that is "irreparable," "great," and "immediate." *Kugler*, 421 U.S. at 123. Under the panel's reading, *Diamond* artificially narrows *Younger*'s irreparable-injury exception, erodes federal jurisdiction, and allows federal constitutional violations to go unremedied. If that is a proper reading of *Diamond*, then *Diamond* should be overruled.[1]

Conclusion

This petition for panel rehearing or rehearing en banc should be granted.

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[1] If this Court believes that reconsidering the decision in this case does not require the resources entailed by full rehearing en banc, it should use its mini-en banc procedure. *See United States v. Peguero*, 34 F.4th 143, 158 n.9 (2d Cir. 2022).

Respectfully submitted,*

/s/ Brian Wolfman

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February 28, 2023

* Counsel gratefully acknowledges the work of Ciara Cooney, Rachel Danner, and Chun Hin Tsoi, students in Georgetown Law's Appellate Courts Immersion Clinic, who played key roles in researching and writing this brief.

Certificate of Compliance

This brief complies with the type-volume limitation of Fed. R. App. P. 35(b)(2)(A) because it contains 3,854 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point Palatino Linotype.

/s/ Brian Wolfman
Brian Wolfman
Counsel for Plaintiff-Appellant

Certificate of Service

I certify that, on February 28, 2023, this brief was filed using the Court's CM/ECF system. All attorney participants in the case are registered CM/ECF users and will be served electronically via that system.

/s/ Brian Wolfman
Brian Wolfman

Counsel for Plaintiff-Appellant

21-1441
Talandar v. State of Vermont

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of January, two thousand twenty-three.

PRESENT:

JOHN M. WALKER, JR.,
REENA RAGGI,
MICHAEL H. PARK,
Circuit Judges.

Draxxion Talandar,

***Plaintiff-Appellant*,**

v.

State of Vermont, **21-1441**

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT: Cabot R. Teachout, DesMeules Olmstead & Ostler, Norwich, VT.

FOR DEFENDANT-APPELLEE: Rachel E. Smith, Deputy Solicitor General, Office of the Attorney General, Montpelier, VT.

Appeal from a judgment of the United States District Court for the District of Vermont (William K. Sessions, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Draxxion Talandar filed a declaratory judgment action in the district court, seeking a judgment that the State of Vermont violated his rights under the Speedy Trial Clause of the Sixth Amendment to the United States Constitution.[1] In December 2019, Vermont charged Talandar with, *inter alia*, multiple counts of felony sexual assault in two cases. Talandar's efforts to raise Speedy Trial Clause challenges in state court were unsuccessful. One of his state cases has now been tried, while the other remains pending. The district court dismissed the present action without prejudice, holding that it was required to abstain under *Younger v. Harris*, 401 U.S. 37 (1971). We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

The *Younger* doctrine recognizes that "only exceptional circumstances . . . justify a federal court's refusal to decide a case in deference to the States," one of which is to avoid "federal intrusion into ongoing state criminal prosecutions." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (cleaned up). We review the application of *Younger* abstention *de novo*. *See Diamond "D" Constr. Corp. v. McGowan*, 282 F.3d 191, 197-98 (2d Cir. 2002). Talandar does not argue that his case falls outside the scope of *Younger* but instead that it qualifies for an exception to that doctrine. The relevant exception requires the plaintiff to show "(1) that there [is] no state remedy available to meaningfully, timely, and adequately remedy the alleged

[1] Talandar's civil complaint was combined with his petition for a writ of habeas corpus under 28 U.S.C. § 2241. He voluntarily dismissed the habeas portion of this case after his release on bail to home detention.

constitutional violation; *and* (2) . . . that the litigant will suffer great and immediate harm if the federal court does not intervene." *Id.* at 201 (cleaned up). This case meets neither requirement.

First, the Vermont courts are capable of adjudicating Talandar's constitutional claims and have done so several times. In fact, Talandar has had some success in the state-court litigation, including obtaining his release on bail—the same relief he initially sought from the district court here. Talandar's lack of complete victory does not show the state courts' inadequacy. "[T]he question whether the state's procedural remedies *could* provide the relief sought does not turn on whether the state *will* provide the relief sought by the plaintiff before the federal court." *Kirschner v. Klemons*, 225 F.3d 227, 235 (2d Cir. 2000).

Second, Talandar has not shown that he will be irreparably harmed absent federal intervention. He points to his "prolonged incarceration" and the delay in scheduling trial, Appellant's Br. at 13, but those issues have since been substantially remedied, and "the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution," *Younger*, 401 U.S. at 46. This Court has previously applied *Younger* to criminal defendants who experienced considerably longer pretrial detention than Talandar. *See, e.g.*, *Jordan v. Bailey*, 570 F. App'x 42, 44-45 (2d Cir. June 19, 2014) (applying *Younger* abstention in a case involving a criminal defendant who "ha[d] been detained for some 52 months"). The district court here also properly declined to entertain Talandar's case.

We have considered all of Talandar's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court