

Case No. 1:20-cr-24

IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF STETSON
WESTVIEW DIVISION
Aug. 30, 2021

THE UNITED STATES OF AMERICA,

Prosecution,

-against

WANDA MAXIMOFF,

Defendant.

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF HER
MOTION TO DISMISS THE INDICTMENT AGAINST HER BECAUSE OF
THE EXPIRATION OF THE STATUTE OF LIMITATIONS**

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INTRODUCTION

The defendant, Wanda Maximoff (“Maximoff”), respectfully moves to dismiss the indictment filed on behalf of the United States Government (“Government”). On July 23rd, 2020, an improper information against Maximoff was dismissed without prejudice (“Information”). The Information alleged that Maximoff violated the Immigration and Nationality Act (“INA”). On September 21, 2021, a Grand Jury improperly indicted Maximoff based on the violation of the INA. The indictment was improper because it was submitted well after the statute of limitations on Maximoff’s alleged violation expired. The Government improperly argued before the Court that they timely filed the indictment under 18 U.S.C. § 3288, however, this statute does not apply because the Information was dismissed before the statute of limitations expired. The Government also argued alternatively that they are entitled to equitable tolling of the statute of limitations. This argument also fails because the Government cannot show that they took all possible measures to timely indict Maximoff, and the COVID-19 pandemic, while seemingly an extraordinary circumstance, was not to blame for the untimeliness. Accordingly, the charges against Maximoff should be dropped because the statute of limitations has expired, and the Defense’s motion to dismiss should be granted.

STATEMENT OF FACTS

Maximoff is an attorney, mother, and caretaker. (Declaration of Monica Rambeau, dated September 24, 2021, at 1-3 (“Dec. Monica”)). On September 21,

2021, Maximoff was indicted (“Indictment”) for allegedly violating the INA. (Indictment of Wanda Maximoff, dated Sept. 21, 2021 (“Indict.”)). This Indictment was spurred by an investigation started by the Government in 2018. (Affidavit in Support of Information, dated July 22, 2020 (“Aff. Woo”), at ¶ 2). The alleged violating events took place between May 31, 2007 and July 24, 2010. (*Id.*) In 2020, the Government sought to file an information against Maximoff. In that same year, on March 23, 2020, Administrative Order No. 20-019 suspended grand jury proceedings because of COVID-19. (Initial Appearance Transcript, dated Sept. 23, 2021 (“Int. App.”), at ¶ 55-65). On July 22nd, 2020, the Government filed the Information against Maximoff alleging she violated the INA. (Order Dismissing the Information, dated July 23rd, 2020 (“Info. Order”)). Maximoff did not waive her right to an indictment under Fed. R. Crim. 7 (“Rule 7”). (Int. App. at ¶ 5, 71). On July 23rd, 2020, this Information was dismissed one day before the statute of limitations on Maximoff’s alleged violations were to expire. (*Id.*).

Grand jury proceedings reopened on March 29, 2021. (Int. App. at ¶62-65). It was not until almost six months after the grand jury was reopened that the Government sought an indictment against Maximoff on September 21, 2020. (Indict.).

Maximoff was arrested on Thursday, September 23, 2021 by warrant following the indictment. (Supplemental Declaration of Agent Woo, dated Sept.

24, 2021 (“Woo Decl.”) at ¶ 1-4). Maximoff now moves for dismissal of the Indictment.

ARGUMENT

A. PRESERVING AN INDICTMENT AGAINST THE DEFENDANT AT THIS STAGE IS AGAINST THE INTEREST OF JUSTICE BECAUSE § 3288 DOES NOT APPLY, THE STATUTE OF LIMITATIONS HAS PASSED, AND THE GOVERNMENT USED IMPROPER TACTICS

The statute of limitations on this case has long passed, and so the Defense’s motion to dismiss should be granted. Continuing to prosecute Maximoff at this stage would be against the interest of justice because the ten-year statute of limitations has passed. The Government attempts to save the untimely Indictment by invoking § 3288(*see* Int. App. at ¶ 62-65), however, the plain language of § 3288 precludes the Government’s use. The plain language of § 3288 would be enough to preclude the Government’s attempted use, however, the unsuitable nature of the Information would also prevent the Government from using the statute. The Information is improper because of the improper tactics employed by the Government. The submission and later dismissal of the Information was in a vain attempt for the Government to avail itself of 18 U.S.C. § 3288, which would have prolonged the ten-year statute of limitations on Maximoff’s alleged violations of the INA. However, both the submission and dismissal of the Information were improper, and so the Government cannot use this Information to avail itself of § 3288. The Government incorrectly submitted the Information against Maximoff

without a waiver, which is against the Fifth Amendment and Rule 7. Moreover, the Information was then dismissed incorrectly because the dismissal was in bad faith and failed to supply a proper reason for said dismissal.

Accordingly, the Government cannot use § 3288 to defend their unjust and untimely Indictment.¹

1. The Indictment Against the Defendant is Untimely Under § 3288 because the Information Was Dismissed Before the Statute of Limitations Had Passed, Meaning 18 U.S.C. § 3288 is Not Applicable

Even if the Information is deemed to be proper, § 3288 would not apply to this case because the Information was dismissed *before* the statute of limitations expired, which is contrary to the plain language of the statute. Accordingly, the Government cannot avail itself of § 3288 because of the plain meaning of the statute.

When interpreting a statute, a court must always begin with the text itself. *NAACP v. Georgia*, 940 F.3d 627, 631 (11th Cir. 2019). § 3288 reads “Whenever an indictment or information charging a felony is dismissed for any reason *after the period prescribed by the applicable statute of limitations has expired*, a new

¹ The Defense acknowledges that the Government may argue that it may avail itself of 18 U.S.C. § 3288’s counterpart, 18 U.S.C. § 3289. This would be possible because, as explained below, the Government dismissed the information against Maximoff *before* the statute of limitations, and § 3289 deals with the extension of the statute of limitations on informations dismissed before the limitations period has ended. 18 U.S.C. § 3289. However, this Court limited the scope of the memorandums addressing the motion to dismiss on two questions “(1) whether the Indictment was timely returned in view of §§3288, 3298; and (2) whether the Government is otherwise entitled to any equitable tolling of a criminal statute of limitations.” (Order on Motion to Dismiss and Detention Hearing, dated September 23rd, 2021). If this Court requests, the Defense can provide a supplemental briefing on whether § 3289 is applicable in this case.

indictment may be returned in the appropriate jurisdiction.” 18 U.S.C. § 3288 (emphasis added). § 3288 then can be used to reinstate prosecutions when the appropriate information was dismissed *after* the statute of limitations has expired. *See Godwin v. United States*, No. 3:10-CR-276-J-34JBT, 2018 WL 6172424, at *7 (M.D. Fla. Nov. 26, 2018) (noting that § 3288 is applicable if the indictment is dismissed after the statute of limitations has passed).

The plain meaning of § 3288 shows that the Government did not comply with the requirements of the statute. The Information was dismissed on July 23, 2020, (Info. Order) before the expiration of the statute of limitations on July 24, 2020. (Int. App. ¶¶29-37). However, § 3288 only applies to informations dismissed *before* the statute of limitations. The Government then cannot argue that the Indictment is in line with § 3288.

Accordingly, this Court should hold that the Government is precluded from availing itself of § 3288 because it goes against the plain language of the statute. In alternate, this Court should nonetheless find § 3288 inapplicable in this case because the statute of limitations has long passed, and the Government used improper tactics.

2. The Statute of Limitations Has Passed, and In the Interest of Justice the Defendant Should Not Be Further Prosecuted

Continuing to prosecute Maximoff almost a year after the statute of limitations on her alleged offense expired is unjust. Accordingly, the Court should dismiss the Indictment to comply with the purpose of the statute of limitations.

The statute of limitations on violations of 8 U.S.C. 1324(a)(1)(A)(iv), (v) is ten years after the commission of the offense. *See* 18 U.S.C. § 3298; *Light v. United States*, No. 18-20281-CR, 2021 WL 925515, at *3 (S.D. Fla. Mar. 11, 2021). A person cannot be prosecuted, tried, or punished for any offenses under the INA “unless the indictment is found or the information is instituted not later than 10 years after the commission of the offense.” 18 U.S.C. § 3298. “The purpose of a statute of limitations is to limit exposure to criminal prosecution to a *certain fixed period of time* following the occurrence of those acts the legislature has decided to punish by criminal sanctions.” *Toussie v. United States*, 397 U.S. 112, 114 (1970) (emphasis added). The statute of limitations in criminal cases begins to run when the crime is “complete.” *United States v. Clarke*, 312 F.3d 1343, 1346 (11th Cir. 2002) (citing *Toussie*, 367 U.S. at 115). “Enforcement of the limitations period ... reduces ‘the danger of official punishment because of acts in the far-distant past.’” *United States v. Maher*, 955 F.3d 880, 885 (11th Cir. 2020) (quoting *Toussie*, 367 U.S. at 114-15). The statute of limitations must be “liberally interpreted in favor of repose ...” *United States v. Foster*, 103 F. Supp. 3d 1335, 1338 (S.D. Fla. 2015),

rev'd and remanded on other grounds, 668 F. App'x 881 (11th Cir. 2016) (quoting *Toussie*, 397 U.S. at 115).

To enforce the untimely Indictment against Maximoff at this time would be against the purpose of the statute of limitations and unjust. In this case, the alleged crime was completed on July 24th, 2010 (Int. App. at ¶¶29-37), which would mean the statute of limitations expired on July 24th, 2020 per 18 U.S.C. § 3298. (*Id.*). The intent of the legislature when § 3298 was enacted was to enforce a limitation period of ten years on the crimes the statute controls. To enforce the untimely Indictment against Maximoff would then go against the purpose of the statute of limitations and would not represent an interpretation of the statute of limitations that favors “repose.” Since the statute of limitations has expired, the Indictment should be dismissed in the interest of justice.

3. The Government Improperly Submitted and Dismissed the Information, and So It Is Not Entitled to § 3288

a. The Information was Improperly Submitted Without a Waiver from the Defendant under Rule 7

On July 22, 2020, the Government improperly submitted an Information charging Maximoff with a felony which goes against Rule 7 and the Fifth Amendment. Because this Information is not compliant with Rule 7 and the Fifth Amendment, it cannot be deemed an “instituted” information for the purposes of § 3288. Accordingly, this unjust Information cannot be applied to make the Indictment timely under § 3288.

The Fifth Amendment provides “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.” U.S. Const. amend V. A felony offense “must be prosecuted by an indictment if it is punishable: (A) by death; or (B) by imprisonment for more than one year.” Fed. R. Crim. P. 7(a). A defendant may waive their right to an indictment under Rule 7(b), but otherwise, “an indictment is necessary [] prerequisite to the prosecution of cases and must be [properly] filed prior to an arraignment.” Fed. R. Crim. P. 7(b); *United States v. McIntosh*, 704 F.3d 894, 904 (11th Cir. 2013). A person cannot be prosecuted, tried, or punished for any offenses under the INA “unless the indictment is found or *the information is instituted* not later than 10 years after the commission of the offense.” 18 U.S.C. § 3298 (emphasis added).

If an information is not properly instituted per the relevant statute of limitations, the improper information cannot then be used by the government to avail itself of § 3288. See *United States v. Machado*, No. 04-10232-RWZ, 2005 U.S. Dist. LEXIS 26255, at *9 (D. Mass. Nov. 3, 2005) (noting that “by equating instituted with filed and then applying 18 U.S.C. § 3288, we have allowed prosecutors to file an information, wait indefinitely, then present the matter to a grand jury well beyond the statute of limitations but within six months of the dismissal of the information.” (quoting *United States v. Burdix-Dana*, 149 F.3d

741 (7th Cir. 1998) (internal quotations omitted)). An information is not properly instituted if it was filed without a waiver from the defendant being charged with the felony. *See United States v. B.G.G.*, Case No. 20-80063-CR-Middlebrooks, at *12-19 (reviewing the legislative and legal history of section 3282 and ultimately concluding that “after studying the legislative history of relevant statutes, I decline to conclude that the unconsented Information in this case was ‘instituted’ within the meaning of 3282 when the Government filed it with the Clerk of Court.”); *Machado*, 2005 U.S. Dist. LEXIS 26255, at *5-*6; *United States v. Sharma*, 14-CR-61, at *5 (S.D. Tex. May 19, 2016).

The Information should not have been submitted against Maximoff. Maximoff is being charged with a felony that is punishable by imprisonment for more than one year. (Indict.) *See* 8 U.S.C. § 1324 (a)(1)(B). Accordingly, under Rule 7(a), a Grand Jury would need to charge Maximoff with these crimes through an Indictment to comply with her Fifth Amendment rights. The Information must be properly instituted for the Government to avail itself of § 3288. Since the Information was improperly instituted by the Government because it was against Rule 7 and Maximoff’s constitutional rights, the Government cannot save the untimely Indictment with § 3288.

Allowing the Government to avail itself of § 3288 would follow in the same sentiment as to “allow[] prosecutors to file an information, wait indefinitely, then

present the matter to a grand jury well beyond the statute of limitations but within six months of the dismissal of the information." Here, the Government indicted Maximoff well *over a year* after the statute of limitations expired (*see* Indict) and *four years* after their initial investigation on Maximoff began. (Aff. Woo at ¶ 5). Moreover, since the Information in this case was filed without a waiver from Maximoff, it was improperly instituted and does not fit into the legislative intent of § 3288. Accordingly, the Information was improperly submitted and so the Government cannot avail itself of § 3288.

b. The Government Dismissed the Information in Bad Faith and the Dismissal Prejudiced the Defendant

This Court should also find that the dismissal of the Information was improper for the following reasons: (1) the dismissal was in bad faith, or (2) alternatively, the record fails to supply adequate reasons for the dismissal which prejudices the Defense's ability to attack the government's motives. Since the Information was also improperly dismissed, the Government cannot use it to avail itself of § 3288.

“[I]n the dismissal of an indictment, information or complaint under Rule 48(a), the government is entitled to a presumption of good-faith.” *United States v. Dyal*, 868 F.2d 424, 429 (11th Cir. 1989); *United States v. Palacio*, No. 21-20301-CR, 2021 WL 3518143, AT *3 (S.D. Fla. July 12, 2021), *report and*

recommendation adopted sub nom. United States v. Palacio, No. 21-20301-CR, 2021 WL 3516662 (S.D. Fla. Aug. 9, 2021).

[T]he government's failure to state its reasons for dismissal contemporaneously with a Rule 48(a) motion entitles the defendant to dismissal with prejudice only if, in response to the government's motion to dismiss the original prosecution or via his own motion to dismiss a subsequent indictment, complaint or information, the defendant demonstrates (1) that the initial dismissal was in bad faith, or (2) that the defendant "has been prejudiced in his ability to attack the prosecutor's motives due to the trial court's failure to require submission of adequate reasons" as a condition of dismissal of the prior prosecution.

Dyal, 868 F.2d at 428.

"[C]ourts cannot use 'Rule 48(a) to gain a position of advantage or to escape from a position of less advantage in which the Government found itself as the result of its own election.'" *Palacio*, 2021 WL 3518143, at *3 (quoting *United States v. Salinas*, 693 F.2d 348, 352-53 (5th Cir. 1982)).

In other words, Rule 48 cannot be used by the Government in an effort to disadvantage the defendant in bad faith or to unfairly give the Government an advantage in prosecution. *Salinas*, 693 F.2d at 352-53. An example of bad faith on part of the government can be seen in *Salinas. Id.* In *Salinas*, the Court found that the Government acted in bad faith by moving to dismiss the indictment because they were displeased with the selected jury. This dismissal was deemed to be in bad faith because (1) it strategically advantaged the government and (2) the government could have chosen other proper avenues to correct the jury. *Id.*

Not only was the Information submitted improperly, but the facts contained in the record can show that the Government then dismissed the Information in bad faith. The Information was filed under seal by the Government on July 22nd, 2020, (Info. Order) two days before the statute of limitations on Maximoff's alleged violations were to expire. (*See* Int. App. at ¶¶ 29-37). The Defense submits that the Government strategically submitted this improper Information two days before the statute of limitations in a poor attempt to take advantage of 18 U.S.C. § 3288. The Government likely suspected that the pandemic would affect the availability of a grand jury indefinitely and surmised that if they submitted an information and then promptly dismissed it, they could extend the statute of limitations on Maximoff's alleged violations. This is because 18 U.S.C. § 3288 states that "whenever an indictment or information charging a felony is dismissed for any reason *after* the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned in the appropriate jurisdiction within *six calendar months of the date of dismissal* or information." 18 U.S.C. § 3288. (emphasis added).

This kind of strategic use is a form of bad faith similar to the actions of the government in *Salinas*. In *Salinas*, the government voluntarily and strategically dismissed the indictment against the defendant because it was not pleased with the jury selection. *Salinas*, 693 F.2d at 352-53. Similarly, the Government in bad faith

was attempting to strategically extend the statute of limitations so it could prolong its untimely prosecution against Maximoff. The *Salinas* court further determined that the government in that case acted in bad faith because if it was displeased with the jury, it could have taken other avenues to correct this. In this case, the Government could have expedited their prosecution of Maximoff and not have waited until the last minute to submit an information or charge her with an indictment. The Government became aware of Maximoff's alleged actions in 2018. (Aff. Woo at ¶ 5). This means the Government had *two years* to properly prepare an indictment against Maximoff, well before the pandemic occurred. In other words, the Government could have taken other proper avenues to prosecute Maximoff within the statute of limitations, similar to the government in *Salinas*. Accordingly, the Government acted in bad faith and so this Court should find the dismissal of the Information improper.

Even if this Court determines that the Government did not act in bad faith, it should otherwise determine that Rule 48 was properly exercised because the record does not reflect a proper reason for requiring the dismissal of the Information. The Order granting the dismissal does not reflect the Government's reason for seeking the voluntary dismissal and nor does the rest of the record. (*See Info. Order*). The absence of this Information puts the Defense at a disadvantage because it cannot properly defend against the Information.

Because the Information was improperly submitted and dismissed, it is improper. Since the Information is improper, the Government cannot avail itself of 18 U.S.C. § 3288. Similarly, the Government is not entitled to an equitable tolling of the statute of limitations.

B. EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS IS UNJUST BECAUSE THE GOVERNMENT HAD THE OPPORTUNITY TO TIMELY SUBMIT A NEW INDICTMENT

The Government is also not entitled to equitable tolling of the statute of limitations because (1) extraordinary circumstances did not preclude the Government from properly indicting Maximoff in the *three years* it was aware of her alleged illegal activity and (2) the Government did not exercise reasonable diligence because it had the ability to indict Maximoff with nothing barring it from uncovering allegedly fraudulent activity aside from its lack of trying. *See Fedance v. Harris*, 1 F.4th 1278, 1284 (11th Cir. 2021) (stating that “[e]quitable tolling pauses the running of, or ‘tolls,’ a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action.” (internal citation omitted)).

The court will not grant Equitable Tolling in this case unless the Government can prove that both an extraordinary circumstance prevented the Government from complying with the statute of limitations, and if the Government used “reasonable diligence” to pursue its rights within the statute of limitations.

Cada, 920 F.2d at 446, 451. Equitable tolling is only granted in exceptional and rare circumstances, therefore the court must use the utmost scrutiny for the purpose of fairness in using this remedy. *Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009). In the present case, neither of these criteria are met.

1. The Government Was Not Directly Impacted by An Extraordinary Circumstance Which Explicitly Delayed Its Timely Filing of the Indictment

The first factor, extraordinary circumstances, is evaluated in several facets. In *Menominee Indian Tribe v United States*, the Menominee Tribe brought an action under the Contracts Dispute Act of 1978 (“CDA”) against the United States government for breach of contract, claiming the government did not fully pay contract support costs. *Menominee Indian Tribe v. United States*, 136 S. Ct. 750, 755 (2016). In Federal District Court, the government argued that the claim was null because, under the CDA, there is a six-year statute of limitations period, which some of the claims exceeded. *Id.* The Tribe rebutted, saying “extraordinary circumstances” stood in the way of timely filing. *Id.* at 759.

Extraordinary circumstances must be both extraordinary and beyond the litigant’s control. *Id.* at 759. The Tribe credited mistaken deadlines, risk of high litigation costs, lawyer error and an untrusting relationship between tribes and the United States. *Id.* However, all of those reasons were not ruled to be extraordinary

or beyond their control, as they were merely mistakes and purposeful stalling on the part of the Tribe. *Id.* at 760.

Furthermore, the extraordinary circumstances cited must be a direct, causal link to the prosecution's inability to timely file. *Sossa v. Diaz*, 729 F.3d 1225, 1229 (9th Cir. 2013). In a current case, *Cowan v. Davis*, an inmate sentenced to the death penalty filed for equitable tolling of the statute of limitations on his motion to file a habeas petition for his case. *Cowan v. Davis*, Case No. 1:19-cv-00745-DAD (E.D. Cal. Apr. 12 2021). Citing to the COVID-19 pandemic, the inmate claimed that his petition has been stalled, despite diligent work from his team, due to the pandemic because he and his council are unable to attend in-person meetings, witness interviews, and gather critical evidence. *Id.* Distinguishable from the present case at hand, *Cowan* presents concrete connections between the pandemic and reasons the statute of limitations was not upheld.

That is not the case in the current facts. The Government here claims that the pandemic satisfied the extraordinary circumstance criteria. While it may be the case that a pandemic related court shutdown was beyond their control, it does not hold here. While Maximoff's formal arrest took place on September 2021, after pandemic restrictions had lifted, information regarding this case came to light in 2018, well before the pandemic began giving the Government ample time to bring a case. (Aff. Woo at ¶ 5). Additionally, an ongoing investigation by Special Agent

Jimmy Woo concluded on or around October 2019 according to his statement. Therefore, the Government was left with at least five months to take action against Maximoff before the pandemic began. (Aff. Woo at ¶ 30). Purposeful stalling or hesitation, as seen in *Menominee Indian Tribe*, is not grounds for an extraordinary circumstance, and there is no clear reason why the information was not filed sooner after the investigation concluded.

Additionally, the Government's argument that it was unable to file a timely indictment due to the pandemic does not hold up as caused by an extraordinary circumstance because the original information was dismissed before the statute of limitations ran out, regardless of the pandemic, so it cannot claim that an extraordinary circumstance such as the pandemic was grounds for dismissal. If there were such an issue of appointment of counsel which was delayed due to the pandemic, there may be a case. *See Brown v. Davis*, 482 F. Supp. 3d 1049 (E.D. Cal. 2020). However, the Government is not citing anything that specific as reason for the delay, and therefore the mere existence of the pandemic is not enough to prove extraordinary circumstances.

2. The Government Did Not Demonstrate Reasonable Diligence to Adhere to the Statute of Limitations

In evaluating if the Government expressed reasonable diligence in exercising its rights, the petitioner bears the burden of proof. *Roundtree v. Fla. Dep't of Corr.*, 2020 WL 8458863, at *4 (M.D. Fla. June 4, 2018). In *Julin v Chiquita Brands*,

Int'l, the court held that reasonable diligence would hold as a reason to exercise equitable tolling if the necessary evidence for the petitioner's case was fraudulent, and therefore there was no way of discovering it. *Julin v. Chiquita Brands Int'l, Inc.* (In re Chiquita Brands Int'l, Inc.), 690 F. Supp. 2d 1296 (S.D. Fla. 2010)

This case deals with a similar situation, where Special Agent Woo was able to uncover allegedly fraudulent activity of Maximoff through bank statements and flight records. (Aff. Woo at ¶ 31). Woo had enough information collected by October 2019 to bring to the Government for a timely filing of the information. Hence, the Government was able to find the evidence needed through a diligent effort within the statute of limitations. There is no evidence stating that the Government needed more time or information to complete its case. Therefore, anything missing would be from lack of trying, not because critical information was truly undiscoverable due to fraud. Upholding the standard in *Julin*, the present case is distinguishable because equitable tolling was permitted in *Julin* when the evidence needed could not possibly be uncovered through a diligent effort. This case differs because the evidence was in fact uncovered, and there was nothing impeding the investigation at the time it took place. the Government's argument that it needs more time to uncover evidence even after a diligent effort likely will not hold.

CONCLUSION

For the reasons stated above, the Government cannot use 18 U.S.C. § 3288 or equitable tolling to preserve the Indictment against Maximoff. Accordingly, in the interest of justice, the indictment should be dismissed for being untimely.

Dated: August 30, 2021

Respectfully Submitted,

/s/ TEAM 102

Attorneys for Defendant

Team 102