UNITED STATES DISTRICT COURT
DISTRICT OF STETSON
WESTVIEW DIVISION

UNITED STATES OF AMERICA.

CASE NO.: 1:21-cr-36

v.

WANDA MAXIMOFF,

Defendant.

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO

DEFENDANT'S MOTION TO DISMISS

/s/ 104
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Attorneys for the Government

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INTRODUCTION

Justice demands action even in the face of insurmountable obstacles. When the COVID-19 pandemic caused the world to shut down, the Government did not. It continued to pursue charges against Wanda Maximoff ("Defendant") even when the court suspended the only avenue to indictment. Penalizing the Government for seeking justice for the Defendant's crimes in the only way it could amid extraordinary circumstances would set a dangerous precedent for the hundreds of other cases with statute of limitations that expired during the pandemic.

The Government thus asks this Court to deny the Defendant's motion to dismiss and uphold the Government's Indictment because (1) it was timely returned pursuant to the statute of limitations and (2) the Government is entitled to equitable tolling.

FACTS

The Defendant is indicted with one count of conspiring to knowingly encourage and induce an illegal immigrant to reside in the United States, despite knowing or recklessly disregarding that such residence will violate the law. 8 U.S.C. § 1324(a)(1)(A)(iv)–(v). The Indictment is the culmination of a multi-year investigation into the Defendant's immigration fraud scheme.

I. DEPARTMENT OF HOMELAND SECURITY INVESTIGATION

The Department of Homeland Security was made aware of the Defendant's criminal acts in May 2018 when an unauthorized immigrant ("S.P.") was arrested for driving under the influence with an expired Stetson driver's license. Woo Decl. ¶ 5. S.P.'s confession of how she obtained a driver's license despite her status led Special

Agent Jimmy Woo ("Agent Woo") to uncover the full extent of the Defendant's forgery scheme, which spanned years and caused at least eight individuals to unlawfully remain in the United States. *Id.* ¶¶ 5, 29.

Throughout his investigation, Agent Woo discovered that the Defendant worked as a certified law clerk for immigration attorney Agatha Harkness ("Harkness") from May 31, 2007 to July 24, 2010. *Id.* ¶¶ 9–10. Instead of helping Harkness's clients legally live in the United States, the Defendant abused her position to target vulnerable immigrants for her forgery scheme and charged $10,000 cash for forged immigration documents. *Id.* ¶¶ 11–29. The Defendant's activities continued until she was fired in late 2010. *Id.* ¶ 29.

II. PROCEDURAL HISTORY

The Government had enough evidence from Agent Woo's investigation to charge the Defendant with one count of a trafficking-related offense: a crime that carries a ten-year statute of limitations. Initial Appearance, 2:47–48, 3:49–52. Accordingly, the statute of limitations was set to expire July 24, 2020. *Id.* at 3:52. However, Agent Woo's extensive investigation ran into 2020. *See* Woo Decl. ¶¶ 32–33 (discussing review of the Defendant's 2019 federal tax return and bank records). This left the Government with an already tight time frame in which it had to initiate grand jury proceedings when the COVID-19 pandemic struck, and the Court suspended grand juries on March 23, 2020. Initial Appearance, 3:60–62. The suspension was not lifted until March 29, 2021, which was after the ten-year statute of limitation expired. *Id.* at 3:49–51, 63–64.

Faced with the choice of letting the Defendant's crime go unpunished or extending the statute of limitations, the Government filed an Information on July 22, 2020, charging the Defendant for the same crime she would eventually be indicted for. Order, No. 1:20-cr-24 (July 23, 2020); Initial Appearance, 3:57. Afraid that the Defendant would flee the country, the Government filed the Information under seal and without a waiver. *Id.* 3: 55–59, 71-72; Woo Decl. ¶¶ 27, 32–34 (explaining the Defendant's extensive international ties). The following day, the Information was dismissed without prejudice. Order, No. 1:20-cr-24 (July 23, 2020). This triggered 18 U.S.C. § 3288, which allowed the Government to weather the suspension of grand juries and, pursuant to the statute, initiate proceedings within six months of the grand jury convening. Initial Appearance, 3:63–65. This is exactly what the Government did, and the Indictment was returned against the Defendant on September 21, 2021. Indictment, No. 1:31-cr-36 (Sept. 21, 2021).

ARGUMENT

I. THE MOTION TO DISMISS SHOULD BE DENIED BECAUSE THE INDICTMENT WAS TIMELY RETURNED UNDER SECTION 3288.

The statute of limitations is tolled when an information or indictment is filed. *United States v. Pacheco*, 912 F.2d 297, 305 (9th Cir. 1990) ("[T]he return of an indictment tolls the statute of limitations with respect to the charges contained in the indictment."); *United States v. Briscoe*, No. CR RDB-20-0139, 2020 WL 5076053, at *2 (D. Md. Aug. 26, 2020) (finding that, for statute of limitations purposes, an information is treated the same as an indictment). The clock begins to run again only if the information is dismissed. *United States v. Grady*, 544 F.2d 598, 601 (2d Cir. 1976). However, if the

statute of limitations expired before information was dismissed, the Government has six months from the date of dismissal to pursue charges. 18 U.S.C. § 3288.[1] If no regular grand jury is in session when the information is dismissed, the Government has "within six calendar months of the date when the next grand jury is convened" to pursue charges. *Id.* This savings clause is triggered if an information was dismissed for a legal defect or "where the dismissal results from defects or irregularities in the grand jury." *United States v. Charnay*, 537 F.2d 314, 355 (9th Cir. 1976); *see United States v. DiStefano*, 347 F.Supp. 442, 444–45 (S.D.NY. 1972) (holding savings clause is triggered if an indictment is dismissed "for technical defects or irregularity in the grand jury").

Here, the Information was filed two days before the statute of limitations expired because the COVID-19 pandemic suspended all grand juries. The Government dismissed the Information the next day and subsequently brought an Indictment within six months after the suspension on grand juries was lifted pursuant to Section 3288. This was the only legal course of action available in the midst of a pandemic that made the initiation of grand jury proceedings impossible.

While the Defendant argues that the Indictment is time barred because the Information is void without a valid waiver, this argument fails for three reasons. First, the plain language of Section 3288 and subsequent case law support that a waiverless

[1] The Court has asked the Government for additional briefing on Section 3288, which concerns cases where an information or indictment was dismissed *after* the statute of limitations has run. Here, the initial information was dismissed the day before the statute of limitation expired. This circumstance is addressed in Section 3289, which is substantially the same statute as Section 3288. Regardless of the statute, the analysis and the outcome are the same.

information is sufficient to "institute" the Information under Section 3298. Second, the Indictment relates back to the Information. Third, requiring a waiver for an information to be valid under Section 3288 undermines the purpose of sealed documents by giving defendants who are flight risks notice of the charges against them.

A. A Waiverless Information Can Be "Instituted" Under Section 3298.

An indictment is required to prosecute a felony offense unless a defendant waives the right in open court. Fed. R. Crim. P. 7(a)–(b). If a defendant waives the right to an indictment, the government may pursue charges by an information. *Id.*; *United States v. Burdix-Dana*, 149 F.3d 741, 742 (7th Cir. 1998). However, to satisfy the statute of limitations under Section 3298, an information must be "instituted not later than 10 years after the commission of the offense." 18 U.S.C. § 3298. An information is thus considered "instituted" if it's filed before the statute of limitations expires. *Burdix-Dana*, 149 F.3d at 743.

Here, Defendant argues that an information is null for purposes of the statute of limitations if it was filed without a valid waiver. However, this Court has not yet decided the issue of whether filing an information without a waiver can be considered instituting an information to toll the statute of limitation under Section 3298. As such, this Court must rely on persuasive authority that has overwhelmingly found that an information without a waiver satisfies the statute of limitation.

i. Section 3298 necessitates equating "instituted" with "filing."

Section 3298 provides that "[n]o person shall be prosecuted, tried, or punished" for trafficking-related offenses "unless the indictment is found or the information is

instituted not later than ten years after the commission of the offense." 18 U.S.C. § 3298. The plain language of Section 3298 is clear: an information need only be filed for a charge to be instituted within the statute of limitation. No language in the statute requires a defendant to first waive their right to an indictment. Nor does Section 3298 equate the institution of an information to the institution of a prosecution. *See Burdix-Dana*, 149 F.3d at 743. Instead, Section 3298 only requires that an information be instituted within ten years of the trafficking-related offense: a requirement the Government met when it filed an information without a waiver on July 22, 2020. Accordingly, the statute of limitations was tolled when the Information was filed.

The Seventh Circuit confronted this issue in *United States v. Burdix-Dana*. *Id.* at 741. The defendant in *Burdix-Dana* made the exact argument as the Defendant here: an information is null if it was filed without a valid waiver. *Id.* at 742. Rejecting this argument, the Seventh Circuit held that a waiverless information was valid for statute of limitation purposes because the plain language of the statute only required an information be *filed* before the statute of limitation expired. *Id.* at 743. This rule has been followed by the majority of district courts that have faced this issue. *See e.g.*, *United States v. Rosecan*, No. 20-CR-80052-RUIZ(s), 2021 WL 1026070, at *3 (S.D. Fl. March 17, 2021); *United States v. Holmes*, No. 18-cr-00258, 2020 WL 6047232, at *8 (N.D. Cal. Oct. 13, 2020); *United States v. Briscoe*, No. CR RDB-20-0139, 2020 WL 5076053, at *2 (D. Md. Aug. 26, 2020); *United States v. Marifat*, WBS-17-0189, 2018 WL 1806690, at *1-2 (E.D. Cal. Apr. 17, 2018); *United States. v. Sharma*, No. 4:14-CR-61, 2016 U.S. Dist. LEXIS 66227, at *2-4 (S.D. Tex. May 19, 2016); *United States v. Hsin-Yung*, 97

F.Supp.2d 24, 28 (D.D.C. 2000). They have followed *Burdix-Dana* because "informations are legitimate charging documents" that satisfy the statute of limitation with or without a waiver. *Hsin-Yung*, 97 F.Supp.2d at 28. Likewise, this Court should hold with this common sense reading of Section 3298 and find that instituting an information tolls the statute of limitations under Section 3298.

ii. The minority approach should not be followed because it relies on an inaccurate reading of Federal Rule of Criminal Procedure 7(b).

The Defendant urges this Court to diverge from the majority and hold that "instituted" requires a valid waiver of indictment to satisfy the statute of limitations. While two key cases support the Defendant's alternate reading of "instituted," their reasoning is not compelling, and their holdings should not be adopted by this jurisdiction.

First, *United States v. Machado* found that an information without waiver cannot satisfy the statute of limitations because courts do not have subject matter jurisdiction over waiverless informations. No. CRIM.A.04-10232-RMZ, 2005 WL 2446213 at *2 (D. Mass. Nov. 3, 2005). The court's conclusion cited no case law to support it. *Id.* It instead explained that an information cannot be instituted without waiver because Rule 7(b) specifies that a defendant must waive their right to an indictment to be prosecuted by information. *Id.* This argument creates a false connection between the statute of limitations and Rule 7(b). While it is undisputed that Rule 7(b) prohibits prosecution without waiver, it does not prohibit the *filing* an information without waiver. *United States v. Cooper*, 956 F.2d 960, 962–63 (10th Cir. 1992) (explaining that Rule 7(b) only "proscribes *prosecution* without waiver"); *United States v. Watson*, 941 F.Supp. 601, 603

(N.D. W. Va. 1996) (following *Cooper*, holding that it "is the reciprocal notion that the filing of the information, and not the Rule 7(b) waiver of indictment, is the event crucial to tolling the applicable limitations period"). As such, *Machado*'s reliance on 7(b) is meaningless, and the Court should give *Machado* little weight.

Second, Defendant have also relied on *United States v. B.G.G.* – the only district court decision to follow *Machado* – to support their argument that there is no distinction between "institution" and "prosecution." No. 20-8-63-CR-MIDDLEBROOKS at *9 (S.D. Fl. Jan. 11, 2021). The Court in *B.G.G.* followed *Machado* after a review of the legislative history of the statute at issue: 18 U.S.C. § 3282, a different statute than the one at issue here with a different legislative history. *Id.* at 12–13. Regardless, any analysis of the legislative history of Section 3298 should hold little weight because it steps outside the bounds of the principles of statutory interpretation. It is well established that "[w]hen the import of words Congress has used is clear . . . we need not resort to legislative history, and we certainly should not do so to undermine the plain meaning of the statutory language." *Harris v. Garner*, 216 F.3d 970, 976 (11th Cir. 2000) (en banc); *see United States v. Gonzales*, 520 U.S. 1, 6 (1997) ("Given [a] straightforward statutory command, there is no reason to resort to legislative history."). Here, review of the legislative history would only serve to undermine the plain meaning of the statute as the Defendant has not argued that the text is ambiguous, but only that it is incompatible with Rule 7(b). As such, both *Machado* and *B.G.G.* should not be followed by this Court.

The Court should instead follow *Burdix-Dana* and its progeny because the holding accords with the plain language of Section 3298. *Burdix-Dana* followed established rules

of statutory interpretation, not looking beyond the plain language of a statute that is unambiguous. To ignore the majority view and read beyond the plain meanings of Rule 7(b) and Section 3298 sets a dangerous precedent because it requires courts to step into the role of lawmakers, blurring the lines between the judicial and legislative branches. Thus, the Government urges the court to follow *Burdix-Dana* and find that an information without waiver can be instituted within the meaning of Section 3298.

B. The Statute of Limitations Does Not Bar the Government's Claims Because the Information Was Involuntarily Dismissed, and the Indictment Was Returned Within the Grace Period Provided by Section 3288.

An indictment returned after the limitations period has expired is valid if the original information was dismissed when there was no regular grand jury in session. 18 U.S.C. § 3288. The indictment must then be returned within six months "of the date when the next regular grand jury is convened." *Id.* It is undisputed that Defendant was indicted within six months after the suspension on grand juries was lifted. As such, the Indictment is valid, and the statute of limitations cannot bar the Government's claims.

While the Defendant argues that the Information was voluntarily dismissed and thus cannot trigger Section 3288, this ignores the effect of the pandemic on the legal system. The Information was dismissed, not because of the Government's mistakes, but because a global pandemic suspended all grand jury proceedings. Initial Appearance, 3:61–62; *see United States v. Sharma*, No. 4:14-CR-61, 2016 U.S. Dist. LEXIS 66227, at *9 (S.D. Tex. May 19, 2016) ("When exigency, unaided by the government, is the basis for an extension [of the statute of limitation], the 'due process' rights of a defendant are not automatically violated."). Understanding that the statute of limitation was expiring

soon, the Government properly filed the Information—the only avenue it had to file charges in this case— to ensure a grand jury would have the opportunity to hear the evidence against the Defendant. *See United States v. Briscoe*, No. CR RDB-20-0139, 2020 WL 5076053, at *2 (D. Md. Aug. 26, 2020) (taking no issue with this tactic in light of the pandemic). An indictment was then promptly returned once the suspension was lifted. Since the Government was diligent in pursing this case and the only reason an indictment was not brought earlier was because of an unprecedented pandemic, the Government's actions should not be seen as voluntary. As such, the Indictment is valid because the Information was not dismissed at the Government's discretion.

C. Requiring Notice for an Information to be Valid Would Undermine the Purpose of Sealed Documents.

Section 3298 does not address cases in which a charging document is brought under seal. However, "[a]n information that is filed within the limitations period is not automatically timely filed, particularly when the filing is hidden from the defendant and public scrutiny." *Sharma*, 2016 U.S. Dist. LEXIS 55227 at *11.

Defendant argues this case is distinguishable because the Information was filed under seal. As such, Defendant arguably had no notice of the charges against them until after the statute of limitation expired. *United States v. Sharma* squarely addressed this issue, holding that the defendant did not have proper notice of the charges against them because both the information and indictment were sealed. *Id.* at *4–5. However, this holding is narrowed only to instances where the government had the "ability to prosecute" the defendant when the information was filed. *Id.* at *9–10. *Sharma* also

clarified that the existence of exigent circumstances at the time the information was filed is relevant to analyzing proper notice. *Sharma*, 2016 U.S. Dist. LEXIS 55227 at *9–10.

Here, exigent circumstances existed because the court suspended grand jury proceedings because of the threat of COVID-19, making it impossible for the Government to obtain an indictment. *See United States v. Holmes*, No. 18-cr-00258, 2020 WL 6047232, at *9 (N.D. Cal. Oct. 13, 2020) (finding that the suspension of grand juries because of COVID-19 was outside the government's control); *cf. Pickens v. Shoop*, No. 1:19-CV-558, 2020 WL 3128536, at *3 (S.D. Ohio June 12, 2020) (holding that equitable tolling applies in the extraordinary circumstance of COVID-19). No facts support Defendant's claim that the Government was not able to prosecute Defendant when it filed the Information. Instead, all evidence points to the opposite: the Government completed its investigation and compiled the necessary evidence before the Information was filed. Thus, the fact that the Information and Indictment were under seal should have no bearing on the statute of limitations because the Government could prosecute the Defendant at the time the Information was filed. The documents were only sealed to ensure that the Defendant could be apprehended before she could flee the country.

i. The Government *only* filed the Information and Indictment under seal to avoid the Defendant fleeing the country.

Even if the Defendant is correct that the sealed documents prevented notice to them, the Government was forced to file the Information and Indictment under seal. When there is a "legitimate prosecutorial objective[]," a charging document can be sealed so that the defendant is not notified. *United States v. Bracy*, 67 F.3d 1421, 1426 (9th Cir.

1995). A legitimate objective includes cases wherein "secrecy [is] paramount to the integrity or success of" a case. *Sharma*, 2016 U.S. Dist. LEXIS 66227 at *10.

Here, filing both the Information and the Indictment under seal was necessary to prevent the Defendant from fleeing the country and evading prosecution. Throughout its investigation, the Government found substantial international ties. Not only does the Defendant travel internationally regularly, but her employer has offices around the world that she frequents for her job. Woo Decl. ¶ 27. Additionally, the Defendant has the means to sustain herself abroad, with two bank accounts in Germany and Switzerland, respectively, which do not fall under the jurisdiction of the United States. *Id.* ¶ 33. Even if the funds were frozen, the investigation revealed that the Defendant made "almost weekly cash withdrawals." *Id.* ¶ 34. As such, she could have a considerable amount of cash stowed away to rely on while evading prosecution. If the charging documents were unsealed before her arrest, the Defendant could have easily left the country and never returned. Subsequently, it was critical to the Government's objective that the charging documents be sealed until an arrest could be made. As such, the policy rationale in favor of sealing the documents outweighs the defendant's argument of lack of notice, and the Indictment should be upheld.

II. THE GOVERNMENT IS ENTITLED TO EQUITABLE TOLLING IN LIGHT OF THE COVID-19 PANDEMIC.

If the Court disagrees with the Government's meaning of "instituted," Defendant's motion to dismiss should still be denied because the Government is entitled to equitable tolling. In criminal cases, equitable tolling "is an extraordinary remedy that is rarely

granted." *Carpenter v. Douma*, 840 F.3d 867, 870 (7th Cir. 2016) (internal quotation omitted). When it is applied, equitable tolling generally "depends on matters outside the pleadings." *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 1003–04 (9th Cir. 2006). This includes cases where "sound legal principles" and "the interest of justice" demand it. *United States v. Midgley*, 142 F.3d 174, 179 (3d Cir. 1998) (internal quotation omitted).

The pandemic is indisputably "an extraordinary public health crisis" that warrants the use of equitable tolling in this case. *Hood v. Catholic Health Systems, Inc.*, No. 1:20-cv-673, 2020 WL 8371205 at *3 (W.D.N.Y. Sept. 28, 2020). Here, the Government should be granted equitable tolling because (1) the presumption for equitable tolling in non-jurisdictional criminal statutes weighs heavily for granting equitable tolling under Section 3298 and (2) the Government satisfies both prongs of the equitable tolling test.

A. Section 3298 is Subject to Equitable Tolling Because the Presumption in Favor of Equitable Tolling is not Outweighed by the Consequences.

Unlike in lawsuits between private litigants, criminal statutes of limitations are not automatically subject to equitable tolling. *See United States v. Atiyeh*, 402 F.3d 354, 367 (3d Cir. 2005). Section 3298 is silent on whether equitable tolling can be used under the statute. However, the Supreme Court has held that "a nonjurisdictional federal statute of limitations is normally subject to a 'rebuttable presumption in *favor* 'of equitable tolling.'" *Holland v. Florida*, 560 U.S. 631, 645–46 (2010) (emphasis in the original) (quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96 (1990)). The Supreme Court has also held that a statute of limitation defense is not jurisdictional. *Day v. McDonough*, 547 U.S. 198, 204 (2006). Here, the Defendant has raised the statute of

limitations as a defense and, subsequently, Section 3298 cannot be jurisdictional. This weighs in favor of applying equitable tolling.

Further, Section 3298 is distinguishable from statutes that do not allow for equitable tolling. Statutes that are incompatible with equitable tolling have detailed and concrete statute of limitations provisions that foreclose the possibility of equitable tolling. *Holland*, 560 U.S. at 646. Section 3298 uses boiler plate language to set out the statute of limitations for trafficking-related offenses. This same language can be found in other statutes that have been subjected to equitable tolling. *Compare* 18 U.S.C. § 3298 ("[N]o person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instated within ten years next after such offense shall have been committed.") *with* 18 U.S.C. § 3282 (using the same language for a five-year statute of limitations) *and* 18 U.S.C. § 3294 (using the same language for a twenty-year statute of limitation). There is nothing that distinguishes Section 3298 from these statutes nor is there any case law to support the view that Section 3298 does not allow for equitable tolling. *See United States v. Midgley*, 142 F.3d 174, 179–80 (3d Cir. 1998) (applying equitable tolling to Section 3282). Consequently, Section 3298 is subject to equitable tolling and, since the interest of justice demands it, should be applied here.

B. Equitable Tolling Applies Because the Government Diligently Pursued Its Rights in Light of COVID-19.

i. The Government was reasonably diligent in its their rights in filing the Information against the Defendant.

Equitable tolling is granted in criminal cases when a litigant (1) has been diligently pursing their rights and (2) "some extraordinary circumstance" stood in their

way of a timely filing. *Pace v. DiGuglielmo*, 544 U.S. 408, 417 (2005). "The diligence required for equitable tolling purposes is reasonable diligence, not maximum feasible diligence." *Holland*, 560 U.S. at 653. A showing of diligence requires that the litigant was as diligent as reasonably possible "under the circumstances." *Baldayaque v. United States*, 338 F.3d 145, 153 (2d Cir. 2003). However, the litigant must also have been diligent in pursing their rights before and after the extraordinary circumstance transpired. *Smith v. Davis*, 953 F.3d 582, 598–99 (9th Cir. 2020).

Here, the Government actively investigated the Defendant since allegations came to light in 2018. There is nothing in the record to indicate that the Government waited an unreasonable amount of time after Agent Woo completed his investigation to charge the Defendant. In fact, all evidence points to the contrary. When the pandemic suspended grand jury proceedings, making getting an indictment before the statutory deadline impossible, the Government did not rest on its rights. It instead pursued the only route available to them: filing an information. When the suspension was lifted, the Government did not rest, but initiated grand jury proceedings to ensure an indictment was returned before the six-month savings period expired.

The Government was undeniably diligent in pursuing its rights. The *only* reason an indictment was not timely returned was because the pandemic stood in its way.

ii. <u>An indictment was not timely returned only because the pandemic caused grand juries to be suspended.</u>

Extraordinary circumstances are not easily defined, meaning that courts must be flexible and "exercise [their] equity powers . . . on a case-by-case basis." *Holland*, 560

U.S. at 650 (quoting *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964)). However, an extraordinary circumstance is generally outside of a litigant's control. *See id.* at 644 (holding attorney misconduct could be an extraordinary circumstance). Recent courts have even acknowledged that the COVID-19 pandemic has created a state of emergency that is undoubtably an "ongoing" extraordinary circumstance. *Dale v. Williams*, No. 3:20-cv-00031-MMD-CLB, 2020 WL 4904624 (D. Nv. Aug. 20, 2020); *Pickens v. Shoop*, No. 1:14-cv-558, 2020 WL 3128536 (S.D. Ohio June 12, 2020).

Here, the pandemic stood directly between the Government and its ability to timely file its Indictment. Attempting to keep the public safe, the Court suspended grand juries during the height of the pandemic from March 2020 to March 2021. As such, the Government could not return an indictment. While the Defendant asserts that the Government had the option to request a waiver to proceed by Information, this was not possible because the Defendant's significant international ties made her a substantial flight risk. Thus, an indictment was the only way to ensure justice could be seen.

While the Defendant argues that equitable tolling cannot be applied to rescue an untimely indictment, this argument is the type of broad-sweeping declaration that equitable tolling principles guard against. Equitable tolling is determined on a case-by-case basis because extraordinary circumstances cannot be predicted or planned for. Creating a complete bar against applying equitable tolling to untimely indictments would run contrary to these principles and should be avoided.

Given the extraordinary nature of COVID-19 and the suspension of grand jury proceedings, equitable tolling is required in this case. Therefore, this Court must uphold

the Indictment as a testament to the Government's diligent pursuit of its rights in the face of an insurmountable obstacle.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Defendant's Motion to Dismiss be denied and the Indictment upheld.

Date: 08/30/2021

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