

Team 105

CASE NO. 1:21-cr-36

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF STETSON
WESTVIEW DIVISION

THE UNITED STATES OF AMERICA

-against-

WANDA MAXIMOFF

Defendant

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS INDICTMENT

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INTRODUCTORY STATEMENT

This court should grant Wanda Maximoff's motion to dismiss the indictment against her and decline the United States' preposterous notion that they retain the ability to avert an explicit statute of limitations via the doctrine of equitable tolling. Wanda Maximoff's arrest was the product of a lengthy fishing expedition conducted by the Department of Homeland Security premised off fruitless leads and minimal evidence of instances that allegedly occurred over a decade ago.

The statute of limitations allowed the United States ample time to file an indictment. It would be unfairly prejudicial to Ms. Maximoff to allow the United States to avoid the consequences of mishandling this case and file past the statute of limitations. It would also ride roughshod over precedent stating that the doctrine of equitable tolling is only to be applied to particular and narrow circumstances. The record is barren of any circumstances or conditions that would lead to the tolling of the statute, meaning the indictment must be dismissed.

REQUEST FOR RELIEF

For these reasons, and those set forth below, the Court should dismiss the Government's indictment and rule in favor of Ms. Maximoff.

STATEMENT OF FACTS

On September 23, 2021, Wanda Maximoff (“Ms. Maximoff”) was arrested after a grand jury returned a bill of indictment against her on September 21, 2021. Ms. Maximoff is a national of the former Socialist Federal Republic of Yugoslavia and a naturalized United States citizen residing in Westview, Stetson. Indictment, ¶ 5. Ms. Maximoff is charged under 8 U.S.C. § 1324 for allegedly knowingly encouraging and inducing an alien to reside in the United States by manufacturing and selling fraudulent OSUPs to said aliens between May 31st, 2007 and July 24, 2010. *Id.*, Count One. Specifically, Ms. Maximoff allegedly conspired to encourage and induce aliens to continue residing in the United States knowing that such residence would be in violation of the law and for the purpose of commercial advantage or private financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(iv), (v). *Id.*

On May 3, 2018, over eight years after the alleged conduct had occurred, the United States Department of Homeland Security (“DHS”) began an investigation into Ms. Maximoff’s conduct. Special Agent Woo Decl. ¶ 5. This investigation stemmed from the arrest of S.P., a Guatemalan citizen illegally residing in the United States, by the Westview Sheriff’s Office for driving under the influence. *Id.* S.P. was found in possession of an expired Stetson Driver’s License, issued on June 2, 2008. *Id.* Special Agent Jimmy Woo (“Woo”) of DHS was contacted by the

Westview Sheriff's Office regarding S.P.'s arrest. *Id.* On May 4, 2018, S.P. informed Woo that she unlawfully entered the United States almost 10 years prior in April 2008. *Id.* ¶ 7. S.P. also informed Woo that she and her husband, H.P., purchased a forged OSUP from a woman named "Scarlet" for \$10,000 and used it to obtain their Driver's Licenses and Employment Authorization Cards. *Id.* S.P. also informed Woo that neither she nor her husband would be able to identify "Scarlet" because they never met her. *Id.* S.P. also disclosed that when the license expired in 2015, she and her husband attempted to locate "Scarlet" but were unsuccessful. *Id.*

On August 10, 2018, H.P. agreed to speak with Woo after he was unsuccessful in reaching his immigration attorney, Harkness. *Id.* ¶ 9. H.P. told Woo that Harkness introduced H.P. and S.P. to Ms. Maximoff, Harkness's employee at the time. *Id.* ¶ 10. H.P. and S.P. then spent a total of 50 hours over two weeks working with Ms. Maximoff on their applications to become lawful temporary residents. *Id.*

H.P. told Woo that on May 23, 2008, as H.P. and S.P. were leaving Harkness's office, they found a note in their paperwork with a phone number for a woman named "Scarlet." *Id.* ¶ 11. The note informed them that "Scarlet" could assist them with obtaining immigration paperwork "like an OSUP " so that they

could apply for a state Driver's License and an Employment Authorization Card. *Id.*

That evening, H.P. called the phone number for "Scarlet," and a man answered. *Id.* at ¶ 12. The unidentified man promised H.P. that he could get him and his wife "what they needed" for \$10,000 in cash. *Id.* H.P. complied, and the following morning, May 24, 2008, H.P. opened his mailbox to find the fraudulent OSUP forms. *Id.* H.P. then informed Woo that other aliens in the neighborhood, who were all clients of Harkness, paid "Scarlet" to obtain fraudulent OSUPs. *Id.* at ¶ 13.

Woo investigated Harkness but found no evidence of fraud. *Id.* at ¶¶ 14–16. The investigation was paused from August 15, 2018, through February 14, 2019 due to Woo's undercover assignment. *Id.* at ¶ 17. There is no evidence that the United States assigned another agent to the case during this time.

On February 19, 2019, Woo conducted a non-custodial interview of R.B., a resident in the same neighborhood where H.P. and S.P. live. *Id.* R.B. confirmed that he illegally entered the United States in 2009 but became a lawful resident in 2012. *Id.* at ¶ 19. R.B. stated that he retained Harkness. *Id.* R.B. also stated he worked with Ms. Maximoff on paperwork, found a note telling him to contact "Scarlet," and R.B. paid "Scarlet" \$10,000 in cash for a forged OSUP. *Id.*

Woo obtained the note and phone number from R.B., tracing it back to The Law Office of Agatha Harkness as an emergency contact for the staff. *Id.* at ¶ 20. Woo then began investigating Ms. Maximoff as “Scarlet.” *Id.* at ¶ 24.

Currently, Ms. Maximoff is employed as “Policy Counsel” by Oscorp Industries, a multinational biomedical corporation with business offices and research facilities in New York, Argentina, Switzerland, Germany, and other European or South American countries. *Id.* at ¶ 32.

Woo interviewed 24 of Ms. Maximoff’s clients and claims that Ms. Maximoff conspired with at least eight (I.M., T.D., S.D., H.P., S.P., A.T., J.C., and R.B.) to provide them a forged OSUP. *Id.* at ¶ 29. Woo later dismissed I.M.’s account of his “drop-off” of documents in his mailbox. *Id.* at ¶ 30. I.M. stated that he believed the person providing the forged document was his attorney, Harkness. *Id.* There were 15 other former clients, who were no longer in the United States, who Woo did not interview. *Id.* at ¶ 31.

The government claims to have been forced to file the information last summer due to the COVID-19 Pandemic, however, the statute of limitations expired on July 24th, 2020. Initial Appearance Transcript ¶¶ 49-63. At the initial appearance hearing the United States cited the “unprecedented pandemic” and the fact that the charges against Ms. Maximoff only recently came to light as reasons for late filing.

(Initial Appearance Transcript ¶¶ 68-70). The grand jury was suspended due to the COVID-19 Pandemic; however, the court lifted the suspension on March 29, 2021 and the indictment was returned 178 days later. *Id.* at ¶¶ 55-65. The Government filed a sealed Information against Defendant on July 22, 2020. *Id.* The Government then filed a Motion for Order of Dismissal, which was granted by the Court on July 23, 2020, dismissing the Information without prejudice. *See* Order Granting Motion for Voluntary Dismissal of Information. Following a grand jury hearing, the Government filed a new Indictment on September 21, 2021 charging Defendant with violating 8 U.S.C. § 1324(a)(1)(A)(iv), (v). *See* Indictment. Ms. Maximoff did not waive her right to an Indictment under Federal Rule of Criminal Procedure 7; therefore, the defense seeks dismissal of the indictment. Initial Appearance Transcript ¶¶ 71-72.

This motion presents two issues, (1) whether the indictment was timely returned in view of §§ 3288, 3298, and (2) whether the government is entitled to any equitable tolling of a criminal statute of limitations.

ARGUMENT

I. THE BILL OF INDICTMENT WAS UNTIMELY FILED BY THE GOVERNMENT AGAINST WANDA MAXIMOFF UNDER 18 USC §§ 3288;3298 AND SHOULD BE DISMISSED WITH PREJUDICE

The charge in the Indictment against Ms. Maximoff alleges that between May 31, 2007, and July 24, 2010, Ms. Maximoff conspired to encourage and induce aliens to continue residing in the United States knowing that such residence would be in violation of the law and for the purpose of commercial advantage or private financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(iv), (v). Indictment ¶ 5.

In general, the statute of limitations in a criminal case is five years. 18 U.S.C. §§ 3282(a), 3288; *United States v. Murillo*, 443 Fed. Appx. 472, 473 (11th Cir. 2011). However, a ten-year statute of limitations applies to non-capital offense(s) or conspiracy to commit a non-capital offense(s) under § 1324(a). 18 U.S.C. § 3298; *Light v. United States*, No. 21-10932-D 2021 U.S. App LEXIS 23918, at *3 (11th Cir. Aug. 11, 2021); *United States v. Romero-Hernandez*, No. 1:16-CR-00430-ELR-LTW-4 2019 U.S. Dist. LEXIS 34309, at *9 (N.D. Ga. Feb. 8, 2019). In Ms. Maximoff's case, the ten-year statute of limitations applied.

1. Statutes of limitation are not "technical" rules but are "substantial and meritorious." Thus, an extension of the statute of limitations would lead to stale claims, and potential loss of evidence.

Statutes of limitations are vital to the welfare of society because they promote justice by preventing surprises through the revival of claims that have been allowed

to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. *See Bowen v. New York*, 476 U.S. 467, 481 (U.S. 1986); *Chaney v. United States*, 75 Fed. Cl. 206, 212 (Fed. Cl. 2007). The statute of limitations is the primary safeguard against the government bringing stale criminal charges. *See United States v. Ramirez*, 491 Fed. Appx. 65, 70 (11th Cir. 2012). Even if the government has a just claim, it is unjust to not put Ms. Maximoff on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them. *See Bowen v. New York*, 476 U.S. 467, 481 (U.S. 1986). Moreover, it might be impossible to establish the truth when the statute of limitations is not adhered to. *See Chaney v. United States*, 75 Fed. Cl. 206, 212 (Fed. Cl. 2007).

The statutory authority extending the statute of limitations does not apply here. Extending the statute of limitations would (1) lead to trying a case with stale facts, and (2) witness memory loss/witness disappearance regarding the case. Here, the issues that come with extending the statute of limitations are already present. Firstly, the government claims that Ms. Maximoff committed these crimes from May 31, 2007, and July 24, 2010. Filing the indictment after July 24, 2020, has led to trying a case with stale facts. Secondly, while Woo was able to interview 24 former clients, he claims that only eight of those 24 interviewees conspired with Ms. Maximoff. Additionally, Woo was unable to interview 15 former clients because

they were either (1) deported or (2) deceased. Statutes of Limitations are vital to the welfare of society, and therefore, because the government failed to timely file within the applicable ten-year period an extension would mean trying a case with stale facts and lost evidence, memories, and witnesses.

2. The Government was not entitled to a six-month extension to the statute of limitations under 18 USC §§ 3298;3289 to submit the Bill of Indictment.

The statute of limitations protects the accused "from having to defend themselves against charges when the basic facts may have become obscured by the passage of time." *Klemisch v. State*, 437 S.W.3d 628, 631 (7th Cir. 2014). Congress has balanced the Government's need to obtain evidence from abroad, and the delays this may entail, against the defendant's interest in repose if charges are not brought with reasonable promptness. *See United States v. Atiyeh*, 402 F.3d, 354, 365 (3d Cir. 2005) ("criminal limitations statutes are to be liberally interpreted in favor of repose.").

The Government filed an Information under seal against Ms. Maximoff on July 22, 2020. *See Order Granting Motion for Voluntary Dismissal of Information*. On July 23, 2020, the information was dismissed by Judge Bradley under Rule 48. *See Order Granting Motion for Voluntary Dismissal of Information; Fed. R. Civ. P. 48* ("The government may, with leave of court, dismiss an indictment, information,

or complaint”). Presently, the statute of limitations expired on July 24, 2020, the government untimely filed the indictment on September 21, 2021.

The government argues that it is entitled to file a new indictment up until six months after the original was dismissed under 18 USC § 3298. There is no dispute that the Information was filed within the statute of limitations.¹ However, to avoid the statute of limitations, the government abused its discretion by filing the Information under seal two days before the statute of limitations was set to expire. *See United States v. Muteke*, 718 Fed. Appx. 854, 857 (11th Cir. 2017).

Further, the Government may contend that under 18 U.S.C. § 3289 it was allowed to bring a new indictment following the expiration of the statute of limitations where the previous one was filed within the applicable limitation period and was not dismissed “failure to file the indictment or information within the period prescribed by the applicable statute of limitations, or some other reason that would bar a new prosecution. 18 U.S.C. § 3289. The government filed the indictment on September 21, 2021, which was not within the applicable 10-year limitations period.

Moreover, the central policy underlying the statute of limitations is that Ms. Maximoff was put on notice. *See United States v. Italiano*, 894 F.2d. 1280, 1285 (11th Cir. 1990). For the statute of limitations period to be extended, the allegations and charges must be substantially the same. *See id.*

¹ The Information was filed under seal on July 22, 2020, just two days before the statute of limitations had run.

The government contends that this case falls within this scenario because it sought the new indictment by grand jury within six months of the suspension being lifted. It is not disputed that an indictment filed after the statute of limitations has expired is still valid so long as it does not broaden the original charges. *See United States v. Ratcliff*, 245 F.3d. 1246, 1253 (11th Cir. 2001) (The court has found that when a defendant was not put on notice of an indictment, the original charges have been broadened).

Ms. Maximoff was not put on notice that she was under investigation until her arrest on September 23, 2021, thus the indictment must be dismissed because it was broadened. *See id.*

Furthermore, Ms. Maximoff never consented to prosecution by information or waived her right to an indictment as contemplated by Rule 7(b), the information is null and void, and the Government cannot maintain a valid prosecution. Initial Appearance Transcript ¶ 71–75. The instant matter is distinguishable from *United States v. Rosecan*, in that Ms. Maximoff was unaware of any investigation or charges pending against her. *See United States v. Rosecan*, No. 20-CR-80052-RUIZ(s), 2021 U.S. Dist. LEXIS 49939, at *7 (S.D. Fla. Mar. 17, 2021). The defendant in *Rosecan* was not only aware of the investigations but signed a Statute of Limitations Tolling Agreement. *See id.* Therefore, the information is null and void and the Government cannot maintain a valid prosecution.

In light of the statute of limitations' important purpose, which protects Ms. Maximoff's right to a fair trial, the reinstatement of count one should be barred, and the Government should not be entitled to bring a new indictment following under 18 U.S.C. §§ 3289;3298.

3. The Government abused the grand jury process under Rule 48 of the Federal Rules of Criminal Procedure by recharging Ms. Maximoff in another indictment.

Under Rule 48(a) of the Federal Rules of Criminal Procedure, Ms. Maximoff is protected from harassment by the government reviving her case. *See Rinaldi v. United States*, 434 U.S. 22, 31 (U.S. 1977). A new indictment following a dismissal is only valid if it was timely filed and does not broaden the original charges. *See Rosecan*, 2021 U.S. Dist. LEXIS 49939, at *11. Moreover, it is an abuse by the government to dismiss the Information and recharge Ms. Maximoff in a superseding indictment simply to bypass the statute of limitations. *See United States v. Rupp*, No. 18-CR-15-LTS 2018 U.S. Dist. LEXIS 182153, at *13 (N.D. Iowa Oct. 24, 2018).

Therefore, the court should dismiss the Government's untimely indictment because it (1) did not adhere to the statute of limitations; and (2) abused the grand jury and Ms. Maximoff by reviving a case that is stale.

II. THE GOVERNMENT'S FAILURE TO FILE A TIMELY INDICTMENT DOES NOT ENTITLE THE GOVERNMENT TO EQUITABLE TOLLING

Allowing the United States of America to skirt the explicit statute of limitations within 18 U.S.C. § 3298 concerning Immigration and Nationality Act (“INA”) offenses under the doctrine of equitable tolling is prejudicial. Litigants must establish that they have pursued their rights diligently and that an extraordinary circumstance prevented them from filing within the statute of limitations. *Smith v. Davis*, 953 F.3d 582, 590 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 878 (2020). While permissible, courts are reluctant to apply equitable tolling in criminal matters absent narrow circumstances. *United States v. Midgley*, 142 F.3d 174, 178 (3d Cir. 1998); *see also Valverde v. Stinson*, 224 F.3d 129, 133 (2d Cir. 2000) (“Equitable tolling applies only in rare and exceptional circumstances.”); *Lombardo v. United States*, 860 F.3d 547, 551 (7th Cir. 2017) (“The threshold necessary to trigger equitable tolling is very high, lest the exceptions swallow the rule.”).

Charges concerning the conduct that allegedly began in 2007 and ended in 2010, being filed late in 2021 after an investigation lasting over two years, cannot warrant the application of equitable tolling. Tolling an explicit ten-year statute of limitations does not comport with the standards described by the third circuit

regarding using tolling sparingly and in the interest of promoting justice. *Midgley*, 142 F.3d at 179.

Although the United States did not begin their investigation until May of 2018, the last-mentioned year within the finding of probable cause is 2019. Woo Decl. ¶ 33. There was almost a full year between when Agent Jimmy Woo obtained the last bit of information from his investigation, 2019, until the United States proceeded with this case. *Id.* The Government, knowing the charge to be brought against Ms. Maximoff, is responsible for being aware of and adhering to the applicable statute of limitations for those charges. Yet, they have failed to return an indictment within the 10-year period for the charge brought against Ms. Maximoff.

1. The conduct of Ms. Maximoff, her legal counsel or any of her associates had no effect on the Government's ability to file this Indictment within the statute of limitations.

Ms. Maximoff's conduct, including compliance with officers when arrested, and an absence of purposeful misstatements of fact or law by defense counsel show there was no foul play on Ms. Maximoff's part. *See United States v. Martin*, 408 F.3d 1089 (8th Cir. 2005) (where statute of limitations for filing of a petition of habeas corpus was tolled after petitioner was misinformed by his attorney about the filing deadline).

In *Midgley*, the Third Circuit upheld the Middle District of Pennsylvania's decision to deny the United States' motion to reinstate charges against defendant, using the doctrine of equitable tolling, after the indictment was dismissed when defendant pled guilty to one of the charges. *Midgley*, 142 F.3d at 175. After serving part of his sentence, the charge defendant pled guilty to was vacated, leading the United States' move for reinstatement on other charges in the indictment. *Id.* at 176. The court found that when a statute of limitations has run, equitable tolling should only apply when the failure to file on time is due to an adversary's malfeasance or the filing party's harmless error. *Id.* at 178. Neither of those elements were present in *Midgley*. *Id.* Thus, the Third Circuit did not allow the United States to prosecute on the other charges, finding no wrongdoing on the part of the defendant or any extraordinary circumstances. *Id.* at 179. The *Midgley* court also found that even though the United States was without fault in the matter and pursued their claims diligently, they were still not entitled to equitable tolling. *Id.*

Unlike the defendant in *Midgley*, Ms. Maximoff has made no attempt to collaterally attack the single charge against her nor has she attempted to interfere with the government's investigation into her alleged criminal acts. The record is not indicative of any interference by defense counsel, the defendant, or any of the defendant's associates. Thus, the government cannot invoke the doctrine of equitable

tolling by way of the defendant's conduct because there is no sufficient showing of wrongdoing on her part.

2. The record is barren of any sufficiently extraordinary circumstances to allow tolling of the statute of limitations.

With regard to equitable tolling, extraordinary circumstances refers to the severity of the impediment faced by the party, not necessarily the distinct circumstances a party finds themselves in. *Harper v. Ercole*, 648 F.3d 132, 137 (2d Cir. 2011). Courts require a showing of "extraordinary circumstances" to warrant the tolling of statutes of limitation. *Midgley*, 142 F.3d at 179. Extraordinary circumstances range from the defendant's meddling or misconduct related to timely filing or when the filing party is incarcerated, or their complaint is negligently or poorly prepared by their attorney, all instances out of the litigant's control in relation to timely filing. *Id.* While it may be possible that the effects of the pandemic could present extraordinary circumstances "[a] petitioner cannot meet his burden of establishing that a court should apply the doctrine of equitable tolling simply by making a passing reference to the pandemic or the resulting lockdown." *Hines v. United States*, No. 20-CV-10064 (CS), 2021 U.S. Dist. LEXIS 112900, at *5 (S.D.N.Y. June 16, 2021) quoting *United States v. Aigbekaen*, No. 15-CV-462, 2021 U.S. Dist. LEXIS 86654, 2021 WL 1816967, at *1 (D. Md. May 6, 2021).

At the initial appearance hearing the United States cited the “unprecedented pandemic” and the fact that the charges against Ms. Maximoff only recently came to light as reasons for late filing. Initial Appearance ¶¶ 68-70. Assistant United States Attorney Samuel Wilson made no specific references as to why the Government was unable to file in a timely manner. The Government’s investigation into these charges began in May, 3 2018, and concluded July 22, 2020, with Woo’s affidavit subscribing to information and probable cause. The 811-day investigation, ending nearly a year after the United States’ filing, hardly seems to warrant the need for equitable tolling. Simply, the United States mismanaged this case and ran the statute of limitations; thus, they should not be entitled to equitable tolling on account of their careless errors.

CONCLUSION

For the above mentioned reasons, the Defendant respectfully requests that the Court grant the defendant's motion to dismiss the indictment and decline to equitably toll to the statute of limitations.

DATED: August 30, 2021

Respectfully submitted,

/s/ Team 105

Team 105

Counsel for Defendant