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

a/k/a “Scarlet”

Defendant

GOVERNMENT’S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT

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INTRODUCTORY STATEMENT

This court should deny Defendant's, Wanda Maximoff, motion to dismiss the indictment and rule in favor of the United States ("the Government"). The Government properly and timely filed the Information against Defendant. At this time, the grand jury had been suspended as a result of the COVID-19 pandemic. The Court then, at the Government's request, dismissed the Information without prejudice the day before the statute of limitations expired. The statutory framework permitted the Government to later file a new Indictment against Defendant within six months of the grand jury reconvening. Such was done here, making the Indictment proper and timely under the law.

Nevertheless, should the Court find the Indictment was untimely under the statutory framework, equitable tolling is applicable in this case. The Government only became aware of Defendant's crimes 8-years after the crimes were committed. Yet, during this time, and throughout the remaining limitations period, the Government's investigation was continued and diligent. However, due to the elusiveness and complexity of Defendant's crimes, the investigation into the Defendant as a suspect began only a year before the COVID-19 pandemic. Throughout the COVID-19 pandemic, the grand jury was suspended. Thus, it was

impossible for the Government to secure an Indictment and begin prosecution until the grand jury had reconvened.

REQUEST FOR RELIEF

For these reasons, and those set forth below, the Court should deny Defendant's motion to dismiss and rule in favor of the Government.

STATEMENT OF FACTS

On May 3, 2018, the investigation into the charges against Wanda Maximoff ("Defendant") began. Special Agent Woo Decl. ¶ 5. S.P., a Guatemalan citizen who did not have the authority to reside in the United States, had been arrested 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 to her on June 2, 2008. Id.

Sergeant Stanley Nielson, at the Westview Sheriff's Office, contacted Jimmy Woo, a Special Agent with the United States Department of Homeland Security ("DHS"). Id. at ¶¶ 2, 5. During an interview on May 4, 2018, S.P. informed Woo that she unlawfully entered the United States in April 2008. Id. at ¶ 7. S.P. also confessed to Woo that she and her husband, H.P., purchased forged immigration documents from a woman named "Scarlet" for a total of $10,000 and used these documents to obtain their Driver's Licenses and Employment Authorization Cards. Id.

On August 10, 2018, H.P., after failing to reach his immigration attorney, Harkness, reached out to Woo. Id. at ¶ 9. H.P. told Woo that Harkness introduced H.P. and S.P. to Defendant, who Harkness describes as "great with paperwork." Id. at ¶ 10. H.P. and S.P. then spent a total of 50 hours over two weeks working with Defendant 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. at ¶ 11. The note advised the reader 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. at ¶ 12.

H.P. called the phone number for "Scarlet" that evening, and a man answered the call. Id. The unidentified man instructed 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 immigration paperwork until 2010. Id. at ¶ 13.

Woo investigated Harkness but found no evidence of fraud. Id. at ¶ 14–16. Woo paused the investigation from August 15, 2018 through February 14, 2019 due to an undercover assignment. Id. at ¶ 17.

On February 19, 2019, Woo conducted a non-custodial interview of R.B., a resident in the same neighborhood H.P. and S.P. live. Id. at ¶ 18–19. R.B. confirmed that he illegally entered the United States in 2009 but became a lawful resident in 2012 and that he retained Harkness, worked with Maximoff on paperwork, found a note telling him to contact "Scarlet," and paid "Scarlet" $10,000 in cash for a forged OSUP. Id. at ¶ 19.

Woo obtained the note and phone number from R.B., tracing it back to The Law Office of Agatha Harkness, discovering it was not Harkness' phone, but an emergency contact for the staff. Id. at ¶ 19–23. It was at this point Woo began investigating the Defendant as "Scarlet." Id. at ¶ 24.

After obtaining a subpoena for Defendant's records, financial records, and flight records, Woo discovered that from 2007–2010 Defendant was claiming income between $40,000 and $65,000 annually on her tax returns, but her bank records for that period (2007–2010) reflected 24 substantial cash deposits in a total amount of $220,000 over the course of four years. Id. at ¶ 26. Additionally, Defendant was frequently travelling internationally over the past 20 years. Id. at ¶

27. Defendant's recent bank records show numerous wire transfers to two bank accounts in Germany and Switzerland. Id. at ¶ 33. Additionally, Defendant has made almost weekly cash withdrawals from her checking account at Meridian Bank in the precise amount of $1,650 since January 2017 through present, except when her flight records show she is traveling abroad, amounting to more than $200,000 in cash that cannot be accounted for. Id. at ¶ 34.

Woo successfully interviewed 24 of Defendant's clients and determined Defendant 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. The earliest payment, by T.D., was made to Defendant on May 31, 2007, and the latest payment was made to Defendant on July 24, 2010. Id. This coincides with Maximoff's termination from her employment by Harkness in late 2010. Id.

The Court (Administrative Order No. 20-019) suspended the grand jury because of COVID-19 as of March 23, 2020. Initial Appearance Transcript ¶ 61–62. In light of all the information discovered throughout the investigation, the Government filed an Information under seal against Defendant on July 22, 2020. See Order Granting Motion for Voluntary Dismissal of Information. The Government then filed a Motion for Order of Dismissal, which was granted by the Court (Bradley, J.) on July 23, 2020. Id. Thereby dismissing the case without prejudice. See id.

Defendant did not waive her right to an Indictment under Federal Rule of Criminal Procedure 7. Initial Appearance Transcript at ¶ 71–72.

When the Court lifted the grand jury suspension on March 29, 2021 (Administrative Order No. 21-008) the Government sought an Indictment by the grand jury within six months. Id. at ¶ 63–65. 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 generally Indictment. Defendant was then arrested on September 23, 2021. See generally Initial Appearance Transcript; see id. at ¶ 18–19.

ARGUMENT

I. THE GOVERNMENT TIMELY FILED THE INFORMATION UNDER 18 U.S.C. § 3298.

Defendant incorrectly seeks dismissal on the basis that the Government's filing of the indictment was untimely. See Order on Initial Appearance. Defendant is charged with violating 8 U.S.C. § 1324(a)(1)(A)(iv), (v). This section permits criminal penalties for:

> [A]ny person who encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or. . . engages in any conspiracy to commit any of the preceding acts, or. . . aids or abets the commission of any of the preceding acts[.]

8 U.S.C. § 1324(a)(1)(A)(iv), (v). Various district courts have found the statute of limitations for an offense under this section is 10 years. See 18 U.S.C. § 3298. ("No person shall be prosecuted, tried or punished for any non-capital offense or conspiracy to commit a non-capital offense under ... section 274(a) of the Immigration and Nationality Act unless the indictment is found or the information is instituted not later than 10 years after the commission of the offense."); *see also Light v. United States*, No. 19-23244-CIV-LENARD/HUNT, 2021 WL 1520729 (S.D. Fla. 2021) ("the statute of limitations for an offense under 8 U.S.C. § 1324(a)(1)(A)(iv) is ten years"); *United States v. Romero-Hernandez*, No. 1:16-CR-00430-ELR-LTW-4, 2019 WL 1049764, at *7 (N.D. Ga. Feb. 8, 2019) ("Alien Harboring, defined in 8 U.S.C. § 1324(a)(1)(A)(iv), under section 274(a) of the

Immigration and Nationality Act, is governed by a ten-year statute of limitations"); *United States v. Magalnik*, 160 F.Supp.3d 909, 916 (W.D. Va. 2015) (same).

The earliest payment to Defendant in relation to these crimes was made on May 31, 2007, and the latest payment was made to Defendant on July 24, 2010, meaning the statute of limitations would expire on July 24, 2020. Special Agent Woo Decl. ¶ 29. The Government filed an Information under seal against Defendant on July 22, 2020. See Order Granting Motion for Voluntary Dismissal of Information. Thus, the Information was filed two days prior to the expiration of the 10-year statute of limitations on the charges under 18 U.S.C. § 3298 and was valid.

a. The Government did not need Defendant's consent to file the Information.

Defendant asserts that because she 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. However, in *United States v. Burdix-Dana*, the Seventh Circuit has previously disagreed with Defendant's argument. 149 F.3d 741 (7th Cir. 1998).

Similar to the instant case, the Government in Burdix-Dana filed a waiverless information approximately four days before the statute of limitations expired. Id. The Seventh Circuit declined Defendant's current position, stating "Rule 7(b) does

not forbid filing an information without a waiver; it simply establishes that prosecution may not proceed without a valid waiver." *Id.* at 742. The circuit court determined that Rule 7(b) concerns itself with the requirements that the government must satisfy before it proceeds with a prosecution, but it does not affect the statute governing the limitation period. *Id.* For this reason, the Government was not required to obtain a waiver or consent from the Defendant prior to filing the Information.

The *Burdix-Dana* court, when looking at the issue under 18 U.S.C. § 3282 and its 5-year limitation period, found "there is nothing in the statutory language. . . that suggests a prosecution must be instituted before the expiration of a five year period; instead the statute states that the information must be instituted." *Id.* Thus, the filing of the information is sufficient to institute it within the meaning of the statutory text. *Id.*

Here, the statute of limitations at issue is established under 18 U.S.C. § 3298, reading:

> No person shall be prosecuted, tried, or punished for any non-capital offense or conspiracy to commit a non-capital offense under section 1581. . . of this title or under section 274(a) of the Immigration and Nationality Act 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. Where the language of the statute "has a plain and unambiguous meaning. . . we need go no further." *United States v. St. Amour*, 886 F.3d 1009, 1013

(11th Cir. 2018). The plain language only requires that the "information" be "instituted" to satisfy the statute of limitations. *United States v. Rosecan*, No. 20-CR-80052-RUIZ, 2021 WL 1026070 (S.D. Fla. 2021). The terms "prosecuted" and "instituted" are not equivalent, and an information is "instituted" when it is properly filed, regardless of the defendant's waiver. *See United States v. Briscoe*, No. CR RDB-20-0139, 2020 WL 5076053, at *2 (D. Md. Aug. 26, 2020) (noting that "[f]urther prosecutorial actions—such as a trial or a plea agreement—would require waiver, as Rule 7(b) sets forth."). Following, the language in section 3298 does not require prosecution to begin within the limitation period but allows for an information to be instituted to satisfy the requirement. *Id.* Thus, the Government's filing of the Information was timely and permissible under section 3298.

b. The dismissal of the Information tolled the statute of limitations.

The day after the valid Information was filed, July 23, 2020, the Government sought, and was granted by the Court, dismissal of the Information without prejudice under Rule 48. *See* Order Granting Motion for Voluntary Dismissal of Information. "The government may, with leave of court, dismiss an indictment, information, or complaint[.]" Fed. R. Crim. P. 48. "Unless a contrary intent is clearly expressed, [R]ule 48(a) dismissals are without prejudice" and are appropriate when "the reason for dismissal does not go to the merits or demonstrate a purpose to harass." *United*

States v. Matta, 937 F.2d 567, 568 (11th Cir. 1991). In evaluating whether to grant leave to dismiss an indictment, information, or complaint without prejudice under Rule 48(a), "the government is entitled to a presumption of good-faith." *United States v. Dyal*, 868 F.2d 424, 428 (11th Cir. 1989).

The law allows for the Government to bring a new Indictment following the expiration of the statute of limitations where the previous one, which was filed within the applicable limitation period, was not dismissed for "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.

> Whenever an indictment or information charging a felony is dismissed for any reason before the period prescribed by the applicable statute of limitations has expired, and such period will expire within six calendar months of the date of the dismissal of the indictment or information, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the expiration of the applicable statute of limitations, or. . . if no regular grand jury is in session in the appropriate jurisdiction at the expiration of the applicable statute of limitations, within six calendar months of the date when the next regular grand jury is convened, which new indictment shall not be barred by any statute of limitations. . .

Id. Here, the Court granted the Government's own motion to dismiss without prejudice under Rule 48. See Order Granting Motion for Voluntary Dismissal of Information. Additionally, in order for section 3289 to be applicable, the dismissal must occur before the statute of limitations expires, but within six months of the

expiration. *Id.* The dismissal of the Information, on July 23, 2020, occurred one day before the statute of limitations expired, July 24, 2020. *See* Order Granting Motion for Voluntary Dismissal of Information.; *see also* supra 18 U.S.C. § 3298. Thus, permitting for a new Indictment or Information to be returned within the applicable time period under 18 U.S.C. § 3289. *See Zedner v. United States*, 547 U.S. 489, 499 (2006) ("When an indictment is dismissed without prejudice, the prosecutor may of course seek—and in the great majority of cases will be able to obtain—a new indictment, for even if 'the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned ... within six calendar months of the date of dismissal.' ").

c. The Government timely filed the new Indictment within six months of the grand jury reconvening.

At the time of the Information and its dismissal the grand jury was suspended, as of March 23, 2020, due to the COVID-19 pandemic. Administrative Order No. 20-019; Initial Appearance Transcript ¶ 60–62. Under section 3298 a new indictment may be returned "within six calendar months of the date when the next regular grand jury is convened" "if no regular grand jury is in session in the appropriate jurisdiction at the expiration of the applicable statute of limitations[.]" 18 U.S.C. § 3298.

Here, the Court did not lift the grand jury suspension until March 29, 2021 (Administrative Order No. 21-008). The Government sought an Indictment by the grand jury within six months of the grand jury reconvening. Initial Appearance Transcript ¶ 63–65. 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 generally Indictment. Thus, the new Indictment was instituted within the required six-month period from the date the grand jury suspension was lifted and was convened.

For the foregoing reasons, the current Indictment against Defendant is valid and timely.

II. SHOULD THE COURT FIND THE GOVERNMENT DID NOT TIMELY FILE THEN THEY ARE ENTITLED TO EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS.

The Government should be entitled to equitable tolling of the statute of limitations because the Courts have not precluded this doctrine from applying in criminal matters and in addition, the issue regarding lost evidence or unavailability of witnesses is not applicable here. *See* Order of Railroad Telegraphers v. Ry. Express Agency, 321 U.S. 342 (1944); *See United States v. Atiyeh*, 402 F.3d, 354, 365 (3d Cir. 2005).

a. Equitable tolling is applicable in criminal matters

Equitable tolling is a doctrine utilized by the court "where principles of equity would make the rigid application of a limitation period unfair." *United States v. Anin*, CR No. 11-240, 2017 WL 714475 (W.D. Penn. Feb. 23, 2017). Courts have stated that "[a]lthough the doctrine of equitable tolling is most typically applied to limitation periods on civil actions. . . 'there is no reason to distinguish between the rights protected by criminal and civil statutes of limitations'." *United States v. Midgley*, 142 F.3d 174, 179 (3d Cir. 1998) (internal citations omitted). Moreover, "[u]nless congress states otherwise, equitable tolling should be read into every federal statute of limitations." *Ellis v. Gen. Motors Acceptance Corp.*, 160 F.3d 703, 706 (11th Cir. 1998).

Here, Count One alleges that defendant, Wanda Maximoff, conspired to help "aliens" remain in the United States through the production and sale of fake OSUP's. *See* Indictment, Count one. Although this is a criminal matter, equitable tolling is still applicable in this context. Moreover, pursuant to 18 U.S.C. § 3298 Congress has expressly stated that the statute of limitations is limited to 10 years for offenses encompassed within the Nationality and Immigration Act. 18 U.S.C. §3298. Congress has not explicitly stated that equitable tolling is unavailable under this current statute. Therefore, equitable tolling is not only applicable in criminal matters, but is appropriate in this specific instance because before this court are exceptional circumstances demanding equitable tolling, in support of the interests

of justice and are backed by well-founded legal principles. *Midgley*, 142 F.3d at 179.

b. This current matter does not present the issues of lost evidence or unavailable witnesses.

It has been held that:

> [s]tatutes of limitation… are designed to 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. . . . The theory is that even if one has a just claim it is unjust not to put the adversary 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.

Ry. Express Agency, 321 U.S. at 348-49. Here, the evidence primarily deals with phone records, financial records, and flight records. Additionally, the witnesses in the current matter are of de minimus value as the concrete evidence is laid out in the aforementioned documentation. Thus, the concern with their memories fading and witnesses disappearing is not relevant as the documentation contains all the evidence the Government needs to bring forth this indictment.

c. The Court should apply equitable tolling as the Government has been diligent in their investigation and the extraordinary circumstance of COVID-19 inhibited their efforts.

In order to invoke the doctrine of equitable tolling, a litigant must show they pursued their claims diligently and that "some extraordinary circumstance" prevented timely filing. *See Watson v. United States*, 865 F.3d 123, 132 (2nd Cir. 2017). The Government was diligent in their investigation leading to the present indictment; moreover, COVID-19 presented an extraordinary circumstance, in which the grand jury was suspended and did not permit for any new indictments, which caused delay.

d. Based on the circumstances presented in this current matter the Government has been diligent in their investigation and indictment of the defendant.

Part one of the two prong test for equitable tolling calls for the party seeking to invoke the doctrine to "[act] with reasonable diligence throughout the period [they] [wish] to toll." *Harper v. Ercole,* 648 F.3d 132, 138 (2d Cir. 2011). However, "[t]his standard calls for 'reasonable diligence, not maximum feasible diligence', which a petitioner may satisfy by showing that he 'acted as diligently as reasonably could have been expected under the circumstances'. " *Id.* at 138-39. Moreover, [a] determination of whether a petitioner has exercised reasonable diligence is made under a subjective test: it must be considered in light of the particular circumstances of the case." *Ross v. Varano,* 712 F.3d 784, 799 (3d Cir.

2013). Lastly, with that being said, "…determining whether a petitioner acted with reasonable diligence is a fact specific inquiry." *Fue v. Biter*, 842 F.3d 650,654 (9th Cir. 2016).

Courts have stated that, one must demonstrate diligence "before, during and after extraordinary circumstances prevented [them] from filing…" *Lara v. McDowell*, No. 21-cv-00044, 2021 WL 2805644 at *6 (E.D. Cal. July 6, 2021). *See United States v. Barnes*, No. 18-CR-154, 2020 WL 4550389, at *2 (N.D. Okla. Aug. 6, 2020), certificate of appealability denied, 831 F. App'x 425 (10th Cir. 2020) (unpublished order) ("COVID-19 measures have been in effect since March 2020, and defendant could have filed his motion long before March 2020.")); *Donald v. Pruitt*, No. 20-1435, 2021 WL 1526421, at *3 (10th Cir. Apr. 19, 2021) (No equitable tolling where petitioner did not show that he was pursuing his rights diligently throughout one-year window, including before COVID-19 restrictions went into place.)); *United States v. Barnes*, No. 18 CR-0154, 2020 WL 4550389 at *2 (N.D. Okla. Aug. 6, 2020) (assuming COVID-19 related lockdown 'delayed defendants ability to file his motion,' but concluding equitable tolling was unwarranted because the defendant did not demonstrate he diligently pursued his claims).

Here, Woo was diligent in his investigation of "Scarlet" under the respective circumstances. Woo promptly began his investigation following the arrest of S.P.,

a Guatemalan citizen not authorized to live in the United States, but contained an expired Stetson Driver's License. Special Agent Woo Decl. ¶5. The morning after the arrest, during his interview with S.P., she revealed to Woo that her husband purchased the illegally counterfeited immigration documents from a person called "Scarlet." *Id.* at ¶7. After receiving this information, Woo followed up with H.P., who at first refused to answer questions, but then on August 10, 2018, reached out to Woo concerning his inability to contact his immigration attorney. *Id.* at ¶8,9. H.P. revealed the details of how he went about obtaining the forged documents from "Scarlet" and shed light into the intimate details of the illegal operation. *See generally id.* With this information, Woo immediately began an open investigation into the law firm and more importantly, into finding out the true identity of "Scarlet." *See generally id.* Woo was diligent in his efforts, subpoenaing documents, door knocking to get further info, and interviewing former clients of the firm. *See generally id.* Woo did not abandon his efforts and was persistent with his investigation even though the defendant operated under a false name.

Moreover, the Government was diligent in the present matter as they pursued an indictment before and after the Court suspended the grand jury. See generally Initial Appearance Transcript. They did not wait months or years after the suspension was lifted, they pursued the matter immediately and without hesitation.

e. COVID-19 which was beyond the Governments control prevented timely filing.

In addition to diligently pursuing one's claim, a litigant must demonstrate that their ability to timely file was blocked by an "extraordinary circumstance." *Menominee Indian Tribe of Wisconsin v. U.S.*, 577 U.S. 250, 255 (2016). Courts have stated that "[t]o count as sufficiently 'extraordinary' to support equitable tolling, the circumstances that caused a litigant's delay must have been beyond its control." *Id.* Furthermore, "[t]he circumstance that stood in a litigant's way cannot be a product of that litigant's own misunderstanding of the law or tactical mistakes in litigation." *Id.* Moreover, courts will not apply equitable tolling in situations involving a "'garden variety claim of excusable neglect' or a 'simple miscalculation'." *Id.* at 257-58. Lastly, "there must be a causal connection, or nexus, between the extraordinary circumstances [the petitioner] faced and [his] failure to file… timely….". And "there must be a causal connection, or nexus, between the extraordinary circumstances [the petitioner] faced and [his] failure to file a timely" § 2255 motion. *United States v. Henry*, No. 2:20-cv-01821, 2020 WL 7332657 (W.D. Penn. Dec. 14, 2020).

Courts have stated that, COVID-19 justifies invoking the doctrine of equitable tolling in situations where a litigant was pursuing his claim diligently and the global pandemic barred them from timely filing. *See United States v. Henry,*

No. 2:20-cv-01821, 2020 WL 7332657 (W.D. Penn. Dec. 14, 2020). (The bottom line is that the COVID-19 pandemic does not automatically warrant equitable tolling for any petitioner who seeks it on that basis. The petitioner must establish that he was pursuing his rights diligently and that the COVID-19 pandemic specifically prevented him from filing his motion. *See Pace v. DiGuglielmo*, 544 U.S. 408 (2005); *Hines v. United States*, 2021 WL 2456679 (S.D.N.Y. 2021) ("no equitable tolling when 'Plaintiff ... does not specifically explain how COVID-19 shutdowns or related issues prevented her from [filing]'." quoting *Stanley v. Saul*, No. 20-CV-499, 2020 WL 6140552, at *4 (W.D. Mo. Oct. 19, 2020)); *Hines v. United States*, 2021 WL 2456679 (S.D.N.Y. 2021) ("While the effects of the COVID-19 pandemic could conceivably 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." quoting *United States v. Aigbekaen*, No. 15-CV-462, 2021 WL 1816967, at *1 (D. Md. May 6, 2021).

Here, as a result of COVID-19, Administrative Order No. 20-019, suspended the grand jury creating an "extraordinary circumstance", which prevented the Government from timely filing. See Initial Appearance Transcript ¶ 60-62. The suspension of the grand jury was out of the Government's control and once the suspension was lifted, the Government pursued the indictment. The Government

was persistent with their efforts to seek an indictment notwithstanding the extraordinary circumstances presented by COVID-19.

CONCLUSION

For these reasons set forth above, the Court should deny Defendant's motion to dismiss and rule in favor of the Government.

Dated: August 30, 2021

Respectfully submitted,

/s/ Team 105

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Team 105

Counsel for the United States of America