

TEAM 107

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF STETSON
WESTVIEW DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO.: 1:20-cr-24

WANDA V. MAXIMOFF,

a/k/a “Scarlet”

Defendant.

GOVERNMENT’S BRIEF IN OPPOSITION OF DEFENDANT’S
MOTION TO DISMISS

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INTRODUCTION

The defendant, Wanda Maximoff (“Maximoff”), brings forth a motion to dismiss alleging that the Indictment against her is null and void due to the Government's failure to comply with the 10-year statute of limitations outlined in 18 U.S.C. § 3298. However, even though the Indictment was returned outside the period outlined in § 3298, the statute of limitations was tolled, and the Government filed a timely Indictment through the provisions outlined in 18 U.S.C. § 3288. The Government filed and later dismissed a prior Information against Maximoff within the 10-year statute of limitations and later refiled an Indictment within the time provisions of § 3288 once the suspension on grand juries was lifted. In addition to the tolling of the statute of limitations under § 3288, the Government is also entitled to equitable tolling of the prescribed 10-year period. The Government was reasonably diligent in complying with the statute of limitations in its case against Maximoff. Though the COVID-19 pandemic and related restrictions unavoidably delayed the Government’s efforts to prosecute Maximoff, the Government remained reasonably diligent in pursuing its claims against her by filing an Indictment against her as soon as possible.

Based on the foregoing reasons, the Government requests that the Court deny Maximoff’s motion to dismiss and treat the Indictment as being timely filed. If the Court does not treat the Indictment as being timely filed, the Government asks that the Court equitably toll the statute of limitations in light of the Governments’ reasonable diligence and the extraordinary circumstance created by COVID-19.

STATEMENT OF FACTS

The defendant, Wanda Maximoff (“defendant”), is alleged to have on or about May 31, 2007, and July 24, 2010, encouraged and induced aliens to continue their residence in the United States for the purpose of gaining commercial advantage or private financial gain. R. at 10. The Government, after an extensive investigation, filed an Information against the defendant for one count of violation of 8 U.S.C § 1324 (a)(1)(A)(iv) on July 22, 2020. R. at 11. However, due to the presences of COVID-19 and its rippling effect on the American society, the court dismissed the Information without prejudice. R. at 11. Under Administrative Order 20-019, grand jury proceedings were suspended on March 23, 2020, in order to ensure public safety and slow the spread of the COVID-19 virus. R. at 11. This restriction made it impossible for the Government to seek indictments against defendants. However, once the spread of the virus began to slow in the United States and the courts began to adopt CDC guidelines in the courtroom, empanelment of the grand jury resumed on March 29, 2021. R. at 11. After grand jury proceedings resumed, the Government sought an Indictment within six months, in compliance with 18 U.S.C. §3288. During Maximoff’s initial appearance before the court on September 23, 2021, one week after the return of the indictment against her, the defendant by way of counsel objected to the indictment and requested that it be dismissed for noncompliance with the statute of limitations R. at 11.

ARGUMENT

A. The Motion to Dismiss Should Be Denied Because the 10-Year Statute of Limitations Was Tolloed by 18 U.S.C. §3288 and the Indictment Was Timely Filed.

The defendant alleges that the Government was not timely in its filing of the September 2021 Indictment against her. The Government rests its case against her on 18 U.S.C. §3298 and §3288. Due to COVID-19 and its halt on the United States court system, the Government was forced to dismiss the original Information filed against Maximoff and wait until the grand jury system was once again up and running. While it may appear as though the Government did not meet the 10-year statute of limitations prescribed by §3298, §3288 tolled the statute of limitations and allowed the Government to file an indictment once again, which it did. §3288 provided a remedy for the Government in light of the pandemic and allowed for a timely filed Indictment. Therefore, the court should deny the defendant's motion to dismiss for violation of the statute of limitations.

1. Wanda Maximoff was charged with violating 8 U.S.C § 1324 (a)(1)(A)(iv), an offense listed under 18 U.S.C. §3298, which provides for a statute of limitations of 10 years.

The Fifth Amendment of the United States Constitution establishes the principle that “no 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. In addition, the Federal Rules of Criminal Procedure provide that an indictment must be obtained for felony crimes unless the offense is non-capital and the defendant waives Indictment, allowing the Government to proceed by way of Information. Fed. R. Crim. P. 7(a)-(b). However, this “answer” to a crime that the constitution alludes to is not indefinite. Rather, Congress has provided safeguards to ensure that defendants are not required to answer for crimes allegedly committed outside a time period in which gathering,

weighing, and presenting evidence is most likely to produce a just result. Statutes of limitations have been essential to ensuring the fairness of the American legal system for centuries, and a statutory limitation on a specific offense serves a distinct and fundamental purpose in criminal law. *Waters v. United States*, 328 F.2d 739 (10th Cir. 1964). Its purpose is to “limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts.” *Toussie v. United States*, 397 U.S. 112, 114. This limited exposure protects defendants from being faced with “defend[ing] themselves against charges when the basic facts have become obscured by the passage of time.” *Id.* Additionally, it ensures that crimes that committed far in the past are not being prosecuted. *Id.* at 115. Unlike civil cases, statutes of limitations in criminal cases are not just a limitation on an individual’s ability to obtain a remedy, instead it is a limit upon the Government’s power to act against the defendant. *Waters v. United States*, 328 F.2d 739, 743.

The statute of limitations in a criminal case is to be construed in favor of the defendant. *Id.* at 742. 18 U.S.C. § 3298 provides, that a person shall not 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.” 18 U.S.C §3288.

The Government alleges that on or about May 31, 2007, through July 24, 2010, Wanda Maximoff did conspire 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.” R. at 10. Maximoff’s alleged crime falls under the Immigration and Nationality Act, one of the offenses outlined in 18 U.S.C. § 3298, and is therefore subject to a 10-year statute of limitations. At first glance, it would seem that Maximoff should have been charged through Indictment or Information no later than July 24, 2020, giving the mistaken appearance that the jury Indictment returned in September of 2021 was not timely filed. However, the dismissed Information filed on July 22nd, of 2020, was indeed filed within the statute of limitations prescribed by 18 U.S.C. § 3298. R. at 11. The presence of this original timely Information is critical and of the utmost importance. When looking at the date of Indictment set apart from the procedural history of the charge, it appears that the Government did not indict the defendant within the statute of limitations provided. However, the law has long provided a remedy to this issue of grand jury irregularities through 18 U.S.C. §3288, the statute that the Government now rests its case on in order to remain within the applicable statute of limitations.

2. 18 U.S.C. §3288 tolled the statute of limitations of §3298, making the September 2021 indictment timely.

While the statute of limitations of a crime is essential, the tolling of those said limitations are sometimes as equally as important as the limit. Over the years, the legislature has implemented laws that allow for the tolling of the statute of limitations in certain situations. 18 U.S.C. §3288. While those situations are limited, they do allow the Government to toll the time required for them to charge an individual. *Id.* The tolling of

the statute of limitations allows the “the continuous flow of the passage of time” to be intersected and to later “be resumed afresh.” *United States v. Lytle*, 658 F. Supp. 1321, 1324 (N. D. Ill., 1987). 18 U.S.C. § 3288 is one of those statutes implemented to toll statute of limitations. *Id.* While it is now in its most updated form, over time, the legislature has amended the code to ensure that it best serves both defendants and the prosecutors that are relying on the tolling principals. *Id.* 18 U.S.C. section 3288 provides 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 the dismissal of the indictment or information, or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final, or, if no regular grand jury is in session in the appropriate jurisdiction when the indictment or information is dismissed, 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. This section does not permit the filing of a new indictment or information where the reason for the dismissal was the 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.

It is critical to emphasize that §3288 by its plain terms applies to indictments that have been dismissed “after the period prescribed by the applicable statute of limitations has expired.” Meaning, that it would only apply once the 10-year statute of limitations under §3298 has completely run. §3288 provides a remedy from “legal pitfalls” when a defendant is indicted within the allotted time period and the indictment is a result of the same facts or circumstances. *United States v. Charnay*, 537 F.2d 341, 354 (9th Cir. 1976). While the entire statute is of great importance, the Government rests its case on the second part of the statute concerning the meeting of a regular grand jury.

Maximoff was originally charged by information on July 22, 2020, for violating 8. U.S.C § 1324 (a)(1)(A)(iv). R. at 10. While a defendant does have the right to an indictment for a charge of this magnitude, the court has long held that an information is sufficient for purposes of §3288 and the Government will not be barred from using the benefit of the statute simply because the Government chose to proceed via information in its initial filing. *United States v. Burdix-Dana*, 149 F.3d 743 (7th Cir. 1998). The information the Government chose to proceed with was within the 10-year statute of limitations which was set to expire on July 24, 2020. However, the court subsequently dismissed the information due to the COVID-19 pandemic and suspension of grand juries. R. at 11. §3288 provides that after the dismissal of the indictment or information, the Government has six months of the date the next grand jury is convened to reindict the defendant without being barred by the statute of limitations. 18 U.S.C §3288. After the dismissal of the information, the Government was faced with a yearlong suspension of grand juries. Meaning there was no way for the Government to get a new indictment

returned, thus they were forced to wait until March of 2021 to begin the grand jury process and appropriate indictment of Maximoff. R. at 11. In order for the statute of limitations to continue to be told, the Government had until September 29, 2021, six months after the COVID-19 suspension of grand juries. The defendant appeared before the court for her first appearance on September 23, 2021, facing the Indictment that had been returned by the grand jury the week prior. R. at 11.

It is clear that the Government returned the Indictment within the six-month period allotted in §3288. While the time between the dismissal of the original Information and the return of a new Indictment were significant, that period of time was not prejudicial to the Government, rather the time was “dead-time” meaning the Government was not required to take action. They were instead required to take action within six months after the suspension of grand juries was lifted and empanelment of the grand juries began. The Government did just that and should not be punished due COVID-19 and its halt on the court system. While the law seeks to protect defendants, it also seeks to protect the Government in its prosecutions. §3288 ensures that a mere technicality in the indictment or the grand jury system will not allow the defendant to be free from criminal prosecution of the crimes they are alleged to have committed. *United States v. Strewl*, 99 F.2d 474 (2nd Cir. 1938).

While the Government did correctly and timely file its indictment against Maximoff, the influence the decision would have on precedent itself should ensure that the defendant should not go free. The COVID-19 pandemic faced courts with situations it had never been faced with before. Courts were shut down, prosecutors were working

from home, and there was no ability to indict individuals. While the country had never seen anything like it before, when the legislator implemented §3288, it provided a remedy for the Government in situations like COVID-19. While it is true that our court system will now be significantly delayed, we cannot let offenders walk away from the criminal charges they would have faced during the yearlong grand jury suspension. The COVID-19 pandemic caused enough issues amongst our society, and letting criminals walk free on a mere technicality will cause even more turmoil in an already hurting society. The Government encourages the court to set precedent that is consistent with the legislative intent of §3288 and allow for the tolling of the statute of limitations of §3298.

B. Equitable Tolling of the Statute of Limitations Is Appropriate in Light of the Government’s Reasonable Diligence, the Extraordinary Circumstance Posed by COVID-19, & the Policy that Informs Equitable Tolling

1. Traditional equity jurisprudence allows this Court to meet the new challenges and injustices posed by the COVID-19 pandemic.

Equity exists to provide remedies when the law offers no path to justice. *See McQuiddy*, 87 U.S. (20 Wall.) at 19 (“There is no artificial rule on such a subject, but each case as it arises must be determined by its own particular circumstances.”) In his well-known *Commentaries on Equity Jurisprudence*, Justice Story stated that equity exists in “every rational system of jurisprudence” to address the cases in “which the antecedent rules cannot be applied without injustice, or to which they cannot be applied at all.” 1 Joseph Story, *Commentaries on Equity Jurisprudence* 6–7 (13th ed. 1886). Because equity requires courts to deal with the specific circumstances of the case before it, courts must flexibly apply the law of equity on a case-by-case basis. *Baggett v. Bullitt*, 377 U.S. 360, 375, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964). The law of equity is so flexible, in fact, that the Supreme Court has stated that equitable principles can be applied

to “meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct ... particular injustices.” *Holland v. Florida*, 560 U.S. at 650 (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944)).

The purposes of equity are reflected in the elements of equitable tolling. For a litigant to obtain equitable tolling, he must establish that he has pursued his rights diligently up to that point, and that some extraordinary circumstances has prevented him from making a timely filing. *Smith v. Davis*, 953 F.3d 582, 588 (9th Cir.) (internal quotation marks omitted) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). The first element of equitable tolling, which requires a litigant to have been reasonably diligent, stems from the traditional equitable predisposition against providing remedies for parties who have not taken adequate action to further their own interests. *See* 1 Joseph Story, *supra* at 226 (“[C]ourts of [e]quity do not sit for the purpose of relieving parties, under ordinary circumstances, who refuse to exercise a reasonable diligence or discretion.”) The second element of equitable tolling, which requires a finding that an extraordinary circumstance prevented timely filing, stems from the fact-specific inquiry that equity requires and the flexible application of equitable principles that it demands. “For if an extraordinary circumstance is not the cause of a litigant's untimely filing, then there is nothing for equity to address.” *Davis*, 953 F.3d at 591.

2. The Government Has Demonstrated the Reasonable Diligence & Extraordinary Circumstances Necessary for Equitable Tolling to Apply.

The Government has met the requirements for equitable tolling by demonstrating that it has been reasonably diligent and that an extraordinary circumstance existed which

prevented it from making a timely filing of an Indictment. A petitioner seeking equitable tolling bears the burden of establishing two elements: “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.” *Smith v. Davis*, 953 F.3d 582, 588 (9th Cir. 2020) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)) (internal quotations omitted). Here, the Government’s use of all reasonable means at its disposal to continue prosecuting Maximoff demonstrates reasonable diligence, and COVID-19 constitutes the sort of extraordinary circumstance

- a. The Government has been reasonably diligent by persisting in its action against Maximoff and using available, alternative means to continue prosecuting her, despite the procedural roadblock posed by Administrative Order No. 20-019.**

For the purposes of equitable tolling, “diligence” refers to the actions that a reasonably diligent person might take under the specific circumstances. *Doe v. Busby*, 661 F.3d 1001, 1015 (9th Cir. 2011); *Fue v. Biter*, 842 F.3d 654 (9th Cir. 2016) (citing *Holland v. Florida*, 560 U.S. at 653).

Here, the Government was reasonably diligent in pursuing its action against Maximoff, because it did everything in its power to prosecute her, even when a grand jury suspension slowed the normal path to justice. The Government filed its first Information against Maximoff on July 22, 2020, well within the 10-year statute of limitations. R. 11. After its first Information was dismissed without prejudice, the Government was forced to file another Information, rather than seek an Indictment, given that Administrative Order No. 20-19 made it impossible for a grand jury to meet. *Id.* Less

than a week after the grand jury suspension was lifted in March 2020, the Government swiftly sought an Indictment by the grand jury within six months to ensure compliance with 18 U.S.C. § 3288, and the grand jury rendered an indictment against her on September 21, 2021. R. 5-6, 11. Despite the special circumstances presented by the COVID-19 pandemic and the administrative order effectively barring any indictments, the Government continued its attempts to prosecute Maximoff by filing an Information, rather than abandoning its efforts or waiting until a grand jury could legally convene and issue an Indictment. Though inhibited by circumstance, the Government did not at any point abandon its efforts to continue prosecuting Maximoff, demonstrating reasonable diligence in furthering its claims against her.

b. The global COVID-19 pandemic, which prevented the Government from timely filing its Information against Maximoff, constitutes an extraordinary circumstance for the purposes of equitable tolling.

Equitable tolling may be applied in cases where an extraordinary circumstance prevented a party's timely filing. *Holland*, 560 U.S. at 649. In addition to proving the existence of an extraordinary circumstance, the party seeking equitable tolling must demonstrate a causal link between the extraordinary circumstance and the party's inability to make a timely filing. *Brown v. Davis*, 482 F. Supp. 3d 1049, 1053 (E.D. Cal. 2020) (citing *Sossa v. Diaz*, 729 F.3d 1225, 1229 (9th Cir. 2013) (“[E]quitable tolling is available only when extraordinary circumstances beyond a prisoner's control make it impossible to file a petition on time and the extraordinary circumstances were the cause of the prisoner's untimeliness.”)).

Here, an extraordinary circumstance certainly prevented the Government from timely filing an Indictment against Maximoff within the 10-year statute of limitations. Put simply, if the COVID-19 pandemic does not warrant inclusion in the category of extraordinary circumstances, nothing does. In early 2020, the world watched in fear and awe as the COVID-19 virus spread rapidly throughout the globe within a matter of months, leading to the shut-down of entire local and national economies, countless deaths, and (naturally) temporary tweaks to the criminal justice system, including suspension of grand juries. No one could have predicted the lasting, far-reaching effects of the pandemic on our world, and the Government certainly could not have predicted or prepared for the effects of Administrative Order 20-019, which would prevent it from timely obtaining an Indictment against Maximoff. Because COVID-19 constitutes an extraordinary circumstance, and because it directly prevented the Government from timely obtaining an Indictment against Maximoff, equitable tolling is entirely appropriate under these circumstances. To decide otherwise would be to undermine the very purpose for which equitable tolling exists, which is to ensure that the interests of justice are served in every circumstance and never sacrificed for the sake of merely adhering to administrative or procedural rules, such as the statute of limitations. Therefore, the interests of justice and the rules governing equitable tolling demand that it be applied in this case.

CONCLUSION

The time provisions outlined in 18 U.S.C. § 3288 and their eligibility to receive equitable tolling, allows the Government to proceed in its prosecution against Wanda Maximoff through the September 2021 Indictment. Due to the halt on the grand jury system, and the yearlong time period between the empanelment of grand juries, the Government did return a timely indictment against Maximoff through 18 U.S.C. § 3288. The Government filed an Information within the 10-year statute of limitations period required by 18 U.S.C § 3298 and later dismissed the Information without prejudice. The Government then returned a grand jury Indictment within 6-months of the re-empanelment of the grand jury after a year-long halt on the system due to the COVID-19 pandemic. During its indictment of Maximoff, the Government was compliant with §3288 which allowed for a tolling of the statute of limitations a timely Indictment despite it being beyond the 10-year limit outlined in §3298.

In addition to the tolling through §3288, the Government is also eligible for equitable tolling. The Government has demonstrated that COVID-19 created an extraordinary circumstance that prevented it from timely filing an Indictment against Maximoff and that, though it did not meet the statute of limitations, it was reasonably diligent by pursuing the alternate avenues of prosecution available to it during the pandemic. Therefore, this Court must equitably toll the statute of limitations in order that the interests of justice may be served.

PRAYER FOR RELIEF

In order that the interests of justice may be served and the prosecution of Maximoff may continue. The Government requests that the Court deny Maximoff's motion to dismiss, allow equitable tolling in this case, and recognize as timely the September 2021 indictment issued against Maximoff.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document has been served via hand-delivery on all attorneys of record on this the 30th day of August 2021:

Respectfully Submitted,

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