UNITED STATES DISTRICT COURT
STETSON DISTRICT OF FLORIDA
WESTVIEW DIVISION

Case No. 1:21-cr-36

UNITED STATES OF AMERICA,

v.

WANDA MAXIMOFF a/k/a/ "Scarlet,"

Defendant.

NON-MOVANT'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE INDICTMENT

/s/ 109
Attorneys for the United States of America

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INTRODUCTION

This Court should deny Wanda Maximoff's ("Defendant") Motion to Dismiss the Indictment. The Government filed an Information ("July 2020 Information") because the Court suspended the grand jury and then filed a timely Indictment when the grand jury was reinstated. Moreover, the Government's diligence and the extraordinary circumstances of the global pandemic justify equitable tolling.

The Government complied with the plain language of 18 U.S.C. § 3298 by receiving the Court's dismissal of the July 2020 Information before filing the Indictment. The Federal Rules of Criminal Procedure do not bar the prosecution because the absence of a waiver from a defendant does not prohibit the filing of a waiverless information to toll the statute of limitations. Accordingly, the Government was not required to inform the Defendant that she was under investigation. Therefore, the Government complied with 18 U.S.C. § 3288 when the Indictment was filed in July 2021.

Even if this Court determines that the Indictment was untimely, this Court should equitably toll the statute of limitations because the Government exercised diligence in the complex investigation of the Defendant but was prevented from obtaining a timely indictment due to COVID-19. During the height of the global pandemic, this Court suspended the grand jury as a precautionary measure, which left the Government no opportunity to seek an indictment before the statute of limitations lapsed. Accordingly, equitably tolling the statute of limitations in light of this extraordinary circumstance would serve the purposes of justice.

STATEMENT OF FACTS

An unlawful business. Special Agent Jimmy Woo ("Agent Woo") received a phone call from Sergeant Stanley Nielson ("Sergeant Nielson") on the evening of May 3, 2018, informing Agent Woo that Sergeant Nielson suspected someone unlawfully assisted an alien in obtaining a driver's license. (Special Agent Woo Decl. 2.) The next day, Agent Woo began to investigate an immigration attorney named Agatha Harkness. (Special Agent Woo Decl. 3–5.) Then, Agent Woo was appointed to an undercover task force assignment, which required him to table the investigation from August 15, 2018, to February 14, 2019. (Special Agent Woo Decl. 5.) After the undercover task force assignment, Agent Woo's investigation led him to an individual working under the pseudonym of "Scarlet." (Special Agent Woo Decl. 5.) On or about March 18, 2019, Agent Woo connected the investigation to the Defendant who clerked under Ms. Harkness. (Special Agent Woo Decl. 6.) This investigation gave Agent Woo reason to believe that the Defendant violated 8 U.S.C. § 1324(a)(1)(A)(iv) and (v). (Special Agent Woo Decl. 8.)

A necessary information. On March 23, 2020, Administrative Order No. 20-19, suspended the grand jury in the District of Stetson because of the unprecedented pandemic, COVID-19, that was at its peak in Stetson between December 2020 and March 2021. *See* (Ty Hayward Decl.); (Initial Appearance Tr. 5.) The suspension did not lift until March 24, 2021, under Administrative Order No. 20-19. (Initial Appearance Tr. 5.) This forced the Government to file the July 2020 Information without a waiver, four days before the limitations lapsed, during the suspension period to toll the statute of limitations, in accordance with the applicable statute. (Initial Appearance Tr. 5.) Then, the Government

moved to dismiss the July 2020 Information under the appropriate Federal Rule of Criminal Procedure. *See* (Order Granting Mot. for Voluntary Dismissal of Information.)

A timely indictment. To comply with the applicable statute of limitations, the Government filed an Indictment that was returned by the grand jury on September 21, 2021—within six months of the dismissal of the July 2020 Information. (Initial Appearance Tr. 5.)

An authorized arrest. On September 23, 2021, around 10:45 a.m., Agent Woo of the Department of Homeland Security arrived at the permanent residence of the Defendant. (Supplemental Decl. of Agent Woo 1.) Initial appearances were entered on September 23, 2021, at approximately 2:00 p.m. (*See* Initial Appearance Tr. 3.)

ARGUMENT

I. The Indictment is timely because the Government filed it in accordance with 18 U.S.C. §§ 3298, 3288.

Title 18, § 3298 of the United States Code provides the statute of limitations for non-capital federal crimes under the Immigration and Nationality Act. 18 U.S.C. § 3298. This section reads: "No person shall be prosecuted, tried, or punished for any non-capital offense or conspiracy to commit a non-capital offense . . . unless the indictment is found or *the information is instituted* not later than [ten] years after the commission of the offense." *Id.* (emphasis added). Accordingly,

> a new indictment may be returned . . . within six calendar months of the date of the dismissal of the indictment or information . . . 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 jury is convened, which new indictment shall not be barred by any statute of limitations.

18 U.S.C. § 3288.

A. The Government instituted the July 2020 Information within the meaning of 18 U.S.C. § 3298.

The Supreme Court considered the term "institute," but only within the context of criminal complaints. *See United States v. Burdix-Dana*, 149 F.3d 741, 742, n.1 (7th Cir. 1998) (citing to *Jaben v. United States*, 381 U.S. 214 (1965)). Therefore, no controlling case law defines the meaning of 18 U.S.C. § 3298's phrase: "information is instituted." The Seventh Circuit, however, proposed and applied a two-part inquiry to analyze this issue in a seemingly identical statute: (1) whether the government may "institute" an information; and if so, (2) whether the dismissal of the information and subsequent filing of the indictment after the limitations period expired satisfy the statute of limitations. *Burdix-Dana*, 149 F.3d at 742. Here, the main focus is on the interpretation of the term "institute" as it applies to an information rather than a criminal complaint. Therefore, this Court should apply the court's reasoning in *Burdix-Dana* with regard to the applicable statute at hand. Accordingly, the filed Information and Indictment charged the Defendant with violating Title 8 of the United States Code, § 1324(a)(1)(A)(iv), (v), so the applicable statute of limitations is 18 U.S.C. § 3298. (Indictment 3.)

1. The language of 18 U.S.C. § 3298 is unambiguous.

When the main thrust of an issue is one of statutory interpretation, courts begin with the text at issue. *See United States v. DBB, Inc.*, 180 F.3d 1277, 1281 (11th Cir. 1999) ("The starting point for all statutory interpretation is the language of the statute

itself.") If the language is unambiguous, the inquiry ends. *United States v. St. Amour*, 886 F.3d 1009, 1013 (11th Cir. 2018) (providing that when the "language at issue has a plain and unambiguous meaning," . . . "we need go no further.").

In this instance, the language of 18 U.S.C. § 3298 is unambiguous. A plain reading of the statute indicates that the term "prosecuted" is not equivalent to the term "instituted," and many federal district courts agree.[1] *See United States v. Briscoe*, No. CR RDB-20-0139, 2020 WL 5076053, at *2 (D. Md. Aug. 26, 2020). For instance, only further prosecutorial actions like a plea agreement or trial require an information to have a waiver. *Id.* Because 18 U.S.C. § 3298 is unambiguous, this Court's inquiry should go no further than the plain reading of the statute. *St. Amour*, 886 F.3d at 1013.

2. Instituting an information does not equate to instituting a prosecution.

In *Burdix-Dana*, the government filed an information without a waiver, approximately four days prior to the expiration of the statute of limitations. *Burdix-Dana*, 149 F.3d at 742; 18 U.S.C. § 3282(a). The government filed an indictment for the same charge two weeks later that the grand jury returned. *Burdix-Dana*, 149 F.3d at 742. In response, the defendant claimed the indictment was untimely, moved to dismiss, and the court denied the motion. *Id.* The defendant appealed the denial to the Seventh Circuit, which held that a waiverless information is not null and may be filed to toll the statute of limitations in accordance with 18 U.S.C. §§ 3282, 3288. *Id.* ("[T]here is nothing in the statutory language of 18 U.S.C.

[1] *See, e.g.*, *United States v. Holmes*, No. 18-cr-00258, 2020 WL 6047232, at *8 (N.D. Cal. Oct. 13, 2020); *Briscoe*, 2020 WL 5076053 at *2; *United States v. Marifat*, No. 2:17-0189 WBS, 2018 WL 1806690, at *1-2 (E.D. Cal. Apr. 17, 2018); *United States v. Stewart*, 425 F. Supp. 2d 727, 729 (E.D. Va. 2006); *United States v. Hsin-Yung*, 97 F. Supp. 2d 24, 28 (D.D.C. 2000); *United States v. Watson*, 941 F. Supp. 601, 603 (N.D.W. Va. 1996).

§3282 that suggests a *prosecution* must be instituted before the expiration . . . instead the statute states that the *information* must be instituted.) (emphasis added); *cf United States v. B.G.G.*, Case No. 20-80063-CR-Middlebrooks [ECF No. 35-1] (finding that the legislative history of 18 U.S.C. § 3282 indicates that instituting an information does not equate to instituting a prosecution). The court countered policy concerns about prosecutors indefinitely stalling limitation periods by reasoning that this situation would only arise if a defendant does not move for a dismissal themselves. *Burdix-Dana*, 149 F.3d at 743.

Many trial courts applied the Seventh Circuit's two-prong inquiry and reasoning, including *United States v. Rosecan*. No. 20-CR-80052, 2021 WL 1026070, at *1 (S.D. Fla. Mar. 17, 2021). In *Rosecan*, the government and Dr. Rosecan signed an agreement to toll the applicable statute of limitations—extending the expiration date by three months. 2021 WL 1026070, at *1. Seven months after the extension, the government filed an information without a waiver, and Dr. Rosecan moved to dismiss the charges. *Id.* Following Dr. Rosecan's motion, the government issued an indictment. *Id.* The court agreed that the government could institute a waiverless information to toll the statute of limitations in accordance with 18 U.S.C. §§ 3282, 3288. *Id.* at *3.

3. The dismissal of the Information and subsequent filing of the Indictment after the limitations period expired satisfies the statute of limitations.

In this case, the only action prior to the filing of the Indictment was the Government's filing of the July 2020 Information to toll the statute of limitations—similar to the action taken by the government in both *Burdix-Dana* and *Rosecan*. *See* (Order Granting Mot. for Voluntary Dismissal of Information.) After filing the July 2020 Information, the

Government filed a Motion for Order of Dismissal. *See* (Order Granting Mot. for Voluntary Dismissal of Information.) This motion was granted by Judge Bradley and dismissed *without prejudice*. (Order Granting Mot. for Voluntary Dismissal of Information 1); *United States v. Dyal*, 868 F.2d 424, 428 (11th Cir. 1989) (finding that the government is entitled to the presumption of good faith in dismissing an information or indictment). Moreover, the Court suspended the grand jury in March 2020 because of COVID-19 concerns, and the Government simply complied with 18 U.S.C. § 3288 when it filed the Indictment after the suspension was lifted. (Initial Appearance Tr. 5.) This Court should follow the Seventh Circuit's logic and reasoning and find that the language of 18 U.S.C. § 3298 is unambiguous, which is supported by Judge Bradley's Order Granting the Government's dismissal without prejudice. *See* (Order Granting Mot. for Voluntary Dismissal of Information 1.) Therefore, the Government instituted the July 2020 Information within the meaning of 18 U.S.C. § 3298 and appropriately tolled the statute of limitations.

B. Federal Rule of Criminal Procedure 7(b) permits the July 2020 Information because the Government did not institute a prosecution.

The Fifth Amendment to the United States Constitution protects defendants from prosecution unless indicted by a grand jury. U.S. CONST. amend. V. Federal Rule of Criminal Procedure 7(a) codified this protection by requiring an indictment to prosecute a felony. Fed. R. Crim. P. 7(a); *see also United States v. McIntosh*, 704 F.3d 894, 904 (11th Cir. 2013). The exception to this rule, however, is Federal Rule of Criminal Procedure 7(b), which allows for prosecution by information "if the defendant in open court and after being advised of the nature of the charge and of the defendant's rights—waives prosecution by

indictment." Fed. R. Crim. P. 7(b). Furthermore, Federal Rule of Criminal Procedure 7(b) "does not prohibit the filing of an information in the absence of waiver of indictment by the defendant." *United States v. Cooper*, 956 F.2d 960, 962–63 (10th Cir. 1992).

In *United States v. Briscoe*, the court found that a waiverless information was valid and complied with Federal Rule of Criminal Procedure 7(b). 2020 WL 5076053, at *2. During the COVID-19 pandemic, the grand jury was suspended for approximately four months. *Id.* at *1–2. Fourteen days before the applicable statute of limitations expired, the government filed an unconsented information. *Id.* The court distinguished the act of filing a waiverless information to toll limitation periods from the act of instituting a trial or plea agreement. *Id.* at *2.

The United States District Court, District of Stetson, Westview Division—along with the nation itself—met an unprecedented circumstance because of COVID-19. *Id.*; (Initial Appearance Tr. 5.) Accordingly, to handle the unprecedented circumstances with their best efforts, the Government complied with the plain reading of 18 U.S.C. § 3298 within the meaning of Federal Rule of Criminal Procedure 7(b). There was no waiver accompanying the July 2020 Information, but the filing of the Information was not intended to initiate prosecution; it was only intended to toll the statute of limitations. (Initial Appearance Tr. 5.) Therefore, the Government later filed the Indictment that was materially identical to the July 2020 Information to comply with Federal Rule of Criminal Procedure 7(b) and provide an opportunity for the Defendant to prepare their defense. (Initial Appearance Tr. 5.) Here, the Government tolled the statute of limitations with the July 2020 Information and refrained from prosecuting the Defendant without a waiver. *See*

(Initial Appearance Tr. 5.) Later, the Indictment instituted the prosecution when a grand jury found that the Defendant should be held accountable for her deceptive crime as required by Federal Rule of Criminal Procedure 7(b).

II. This Court should equitably toll the statute of limitations because the Government exercised diligence when investigating the Defendant, and the global pandemic created extraordinary circumstances that impeded a timely prosecution.

Even if this Court finds that the statute of limitations was not satisfied by 18 U.S.C. § 3288, the Court should equitably toll the limitations to serve the purposes of justice. The Supreme Court of the United States has held that when an action is untimely, a court may "establish[] an exception to the limitations period." *Musacchio v. United States*, 577 U.S. 237, 248 (2016). Although federal courts typically apply equitable tolling "in suits against private litigants," the Supreme Court has never prohibited the government from invoking the doctrine in criminal prosecutions. *See Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 90 (1990). Generally, courts may equitably toll a statute of limitations when: (1) a party diligently pursues their rights, and (2) an extraordinary circumstance inhibits their ability to exercise those rights. *See generally Holland v. Florida*, 560 U.S. 631 (2010).

Once a party has met this burden, a court may, but is not required to, suspend the statute of limitations. *See Barreto-Barreto v. United States*, 551 F.3d 95, 100 (1st Cir. 2008). Courts equitably toll statutes of limitations when "the principles of equity would make the rigid application of a limitation period unfair." *Petroleos Mexicanos Refinaction v. M/T King A*, 554 F.3d 99, 110 (3d Cir. 2009) (alterations and internal quotations omitted). To serve the principles of justice, this Court should equitably toll the statute of

limitations because (1) the Government diligently pursued its investigation into the Defendant's crimes; and (2) the extraordinary circumstances created by the global COVID-19 pandemic inhibited the Government from timely filing the Indictment.

A. The Government diligently pursued criminal charges against the Defendant.

Courts permit equitable tolling for parties who diligently pursue their claim. *China Agritech, Inc. v. Resh*, 138 S.Ct. 1800, 1808 (2018). Accordingly, a party is only required to act with "*reasonable* diligence," not "*maximum feasible* diligence." *Holland*, 560 U.S. at 654 (emphasis added). Thus, courts will deny equitable tolling when a party's request is based on "what is at best a garden variety claim of excusable neglect." *Irwin*, 498 U.S. at 96.

In civil suits, plaintiffs of a class action who have their claims dismissed for failure to maintain a class of sufficient size have not slept on their rights. *China Agritech*, 138 S.Ct. at 1808. Even though their claims were dismissed, the plaintiffs were entitled to equitable tolling because they exercised reasonable diligence by attempting to adjudicate their claim. *See id*. Similarly, a plaintiff has exercised reasonable diligence in pursuing their claim when they seek assistance from the court, clerks, and the state bar to remove their attorney, after their lawyer becomes an impediment to their case. *Holland*, 560 U.S. at 654. Though more effective steps could have remedied the issue in *Holland*, the defendant was entitled to equitable tolling because *reasonable* diligence was the applicable standard, not *maximum feasible* diligence. *See id.* Conversely, a garden variety claim of neglect occurs when a plaintiff's attorney is absent from their practice and fails to commence an action within the period of limitations. *Irwin*, 498 U.S. at 96.

The Government exercised reasonable diligence throughout the investigation of the Defendant. Specifically, the Government did not become aware of the Defendant's criminal activities occurring from May 31, 2007, to July 24, 2010, until May 2018. (Initial Appearance Tr. 4); (Special Agent Woo Decl. 2.) In May 2018, the Government first obtained knowledge that an individual operating under the pseudonym of "Scarlet" disseminated forged immigration documents. (Special Agent Woo Decl. 3.) However, the Government did not ascertain that "Scarlet" was the Defendant until around March 18, 2019, when the Government subpoenaed the Defendant's phone, financial, and flight records. (Special Agent Woo Decl. 6.) The Government's agent provided an Affidavit in Support of Information on July 22, 2020, and filed the Information that same day because the grand jury had been disbanded due to the ongoing COVID-19 pandemic. *See* (Order Granting Mot. for Voluntary Dismissal of Information); (Special Agent Woo Decl. 8.)

The Government, like the party in *China Agritech*, has not slept on its right to bring legal action. *See* 138 S.Ct. at 1808. Specifically, the Government deliberately and methodically investigated the Defendant's complex criminal activity over multiple years to build an effective case against her. *See* (Special Agent Woo Decl.) This investigation required the Government to investigate numerous parties, subpoena multiple records, and collect countless pieces of evidence to uncover the Defendant's crimes. *See* (Special Agent Woo Decl.); (Maximoff Flight Rs.); (Maximoff Financial Accounts.)

Although the Government tabled the investigation from August 15, 2018, until February 14, 2019, the Government could not have been aware that an unprecedented global pandemic would impede their prosecution more than a year later. *See* (Special Agent

Woo Decl. 5.) Even though this Court suspended the grand jury, the Government, like the party in *Holland*, attempted to overcome the obstacle impeding their action. *See* 560 U.S. at 654. Specifically, the Government filed the July 2020 Information with this Court and its motion to dismiss was granted without prejudice in accordance with Federal Rule of Criminal Procedure 48(a). *See* (Order Granting Mot. for Voluntary Dismissal of Information.) The Government's filing of the July 2020 Information was consistent with congressional intent to toll the limitations period when grand juries are suspended. *See supra*, Argument I. Even though the Government may have taken different actions in hindsight, to avoid the possibility of tolling the statute of limitations, a party is only required to act with "*reasonable* diligence," not "*maximum feasible* diligence." *See Holland*, 560 U.S. at 654. Accordingly, the Government's actions do not constitute "a garden variety claim of excusable neglect" because the Government did not simply forget about the Defendant's crimes or delay the Indictment to achieve a stronger prosecutorial position. *See Irwin*, 498 U.S. at 96.

B. The global COVID-19 pandemic has created an extraordinary circumstance that warrants equitable tolling.

The second element courts require before equitably tolling the statute of limitations is an extraordinary circumstance outside the party's control that impairs their ability to timely commence their action. *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255 (2016). The court must make a case-by-case determination of whether it is proper to equitably toll a statute of limitations. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944) ("[T]his equitable procedure has always been characterized by

flexibility which enables it to meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved in these situations.").

Judicial or government interference, such as intentionally misleading a party on the applicable tolling period, constitutes an extraordinary circumstance beyond a party's control. *See Pliler v. Ford*, 542 U.S. 225, 232 (2004) (O'Connor, J., concurring). For example, courts have found that other unprecedented occurrences, like the terrorist attacks of September 11, 2001, are extraordinary circumstances. *See Buckley v. Doha Bank Ltd.*, No. 01 CIV. 8865(AKH) 2002 WL 1751372 (S.D.N.Y. July 29, 2002). Conversely, an attorney's miscalculation of a filing deadline does not amount to an extraordinary circumstance where courts will permit tolling. *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007).

Some courts have already evaluated equitable tolling of statutes of limitations within the context of the COVID-19 pandemic. For example, every federal district court in Texas blanketly tolled the statute of limitations, when legally permissible, in light of the pandemic.[2] Moreover, a Texas district court equitably tolled the statute of limitations

[2] *See* U.S. District Court for the Western District of Texas, Supplemental Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 Pandemic, dated April 15, 2020, at ¶ 3 ("All deadlines are suspended and tolled for all purposes, including the statute of limitations, from now through May 31, 2020."); U.S. District Court for the Eastern District of Texas, General Order 20-03, dated March 16, 2020, at ¶ 3 ("All related deadlines are suspended and tolled for all purposes, including the statute of limitations, from this date through May 1, 2020," updated in General Order 20-09); U.S. District Court for the Northern District of Texas, Special Order No. 13-11, dated April 22, 2020 (extending Special Order No. 13-5 and tolling all statutes of limitations until May 31, 2020); U.S. District Court for the Southern District of Texas

period after the blanket toll lapsed because the pandemic slowed the court's internal processes and the party's ability to conduct timely discovery. *See Klick v. Cenikor Found.*, 509 F.Supp.3d 951, 957 (S.D. Tex. 2020). Some courts have found that COVID-19 alone does not automatically justify an extraordinary circumstance, but instead requires a party to demonstrate how the global pandemic prevented their timely action. *See Phillips v. United States*, No. 8:18-CR-91-T-27AAS, 2021 WL 679259, at *3 (M.D. Fla. Feb. 22, 2021). In *Phillips*, the court held that a prisoner losing access to legal materials due COVID-19 lockdowns, was not an extraordinary circumstance because the plaintiff failed to explain how these materials prevented the timely filing of their action. *Id.*

This Court should find that COVID-19 was an extraordinary circumstance that inhibited the Government from timely filing its Indictment. The global COVID-19 pandemic was at its peak in Stetson between December 2020 and March 2021. (Ty Hayward Decl.) This pandemic has dramatically altered society through lockdowns, mask mandates, and the death of hundreds of thousands of Americans. Patrick Van Kessel, et al., *In Their Own Words, Americans Describe the Struggles and Silver Linings of the COVID-19 Pandemic*, PEW RESEARCH CENTER (Mar. 5, 2021), https://www.pewresearch.org/2021/03/05/in-their-own-words-americans-describe-the-struggles-and-silver-linings-of-the-covid-19-pandemic/. Accordingly, this Court should find, like other federal courts, that COVID-19 is an extraordinary circumstance.

(Brownsville Division), Special Order B-2020-04, dated April 14, 2020, at ¶ 4 ("related deadlines are suspended and tolled for all purposes, including the statute of limitations, from this date through June 1, 2020.").

The Government can specifically explain how COVID-19 prevented the timely filing of the Indictment. This Court suspended the grand jury to ensure the safety of all individuals due to the pandemic. *See* (Initial Appearance Tr. 5.) The Government completed its investigation and submitted an Information to the Court on July 22, 2020. *See* (Order Granting Mot. for Voluntary Dismissal of Information). It was not until March 29, 2021, that the Court lifted the suspension of the grand jury, which left the Government no window to file an indictment after the conclusion of the Defendant's investigation. *See* (Initial Appearance Tr. 5.) Accordingly, the Government had two options: forego the prosecution of the Defendant's crimes or file an Information to toll the statute of limitations. Therefore, this Court should equitably toll the statute of limitations to prevent the Defendant from escaping prosecution for her intricately veiled crime.

CONCLUSION

This Court should deny the Defendant's Motion to Dismiss the Government's Indictment. The Government filed the July 2020 Information to toll the statute of limitations before lapse in accordance with 18 U.S.C. § 3298. Even if this Court finds that the Indictment was untimely, this Court should equitably toll the statute of limitations because the Government diligently investigated the Defendant but the unprecedented global pandemic inhibited its efforts to commence the action within the limitations period.

Respectfully submitted,

/s/ 109
Attorneys for the United States of America