CASE NO.: 1:21-cr-36

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

WANDA MAXIMOFF, an individual,

Defendant.

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

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INTRODUCTION

Defendant Wanda Maximoff, hereby submits this Motion to Dismiss on grounds that the Government's filing of an information absent a waiver of indictment, did not extend the limitations period per 18 U.S.C. § 3288 and further, an extension of the limitations period invoked under the doctrine of equitable tolling would be improper because the Government did not exercise reasonable diligence, nor did Covid constitute an "extraordinary circumstance" that impeded timeliness. Both positions are supported by the Memorandum of Law below, and accordingly, the Court should grant Defendant's Motion to Dismiss.

STATEMENT OF FACTS

On September 23, 2021, Special Agent Jimmy Woo, with the Department of Homeland Security ("DHS"), entered Monica Rambeau's home to apprehend Defendant Wanda Maximoff, an attorney for Oscorp Industries. Supplemental Declaration of Agent Woo ("Woo Supp. Decl.") ¶ 1, 32. Agent Woo informed Ms. Maximoff he had a warrant for her arrest based on an indictment returned by a grand jury on September 21, 2021 ("Indictment"). Woo Supp. Decl. ¶ 3. Ms. Maximoff, surprised by the news, asked to review the Indictment, but Agent Woo could only describe the nature of the charge as the Indictment was under seal. Woo Supp. Decl. ¶ 4. Agent Woo then arrested Ms. Maximoff and placed her in custody. Woo Supp. Decl. ¶ 7.

Ms. Maximoff was not aware she was under investigation for a federal crime until her arrest. Initial Appearance Transcript ("IAT") 73. The Government charged Ms. Maximoff with conspiring to induce and encourage aliens to unlawfully reside in the U.S.

between May 31, 2007, and July 24, 2010, in violation of 8 U.S.C. § 1324. IAT 29-34. Ms. Maximoff also learned the Government filed an information on July 22, 2020 ("Information"), two days before the time limitation had expired on July 24, 2020. IAT 57-58. The Information was dismissed without prejudice one day later on July 23, 2020, at the Government's request. IAT 59-60. The Government never notified Ms. Maximoff of the Information filed against her in July of 2020; nor did Ms. Maximoff ever waive her right to an indictment under Federal Rule of Criminal Procedure 7. IAT 71-74.

In response to Covid, the Court suspended the grand jury on March 23, 2020. IAT 61-62. The suspension lasted over a year and ended on March 29, 2021. IAT 63. However, the Government waited almost six months after the suspension ended to indict Ms. Maximoff. IAT 64. The Government indicted Ms. Maximoff with an information "materially identical" to the one filed in July of 2020. IAT 57.

Agent Woo began his investigation when he found S.P. in possession of a fraudulent driver's license issued on June 2, 2008. Declaration of Agent Woo ("Woo Decl.") ¶ 5. Agent Woo learned that S.P.'s husband, H.P., purchased forged immigration documents from a woman named "Scarlet," which were then used to obtain Stetson Driver's Licenses and Employment Authorization Cards. Woo Decl. ¶ 7. On August 10, 2018, H.P. informed Agent Woo that he could not reach his immigration attorney, Agatha Harkness. Woo Decl. ¶ 9. Ms. Harkness hired Ms. Maximoff back in 2007 when Ms. Maximoff was attending law school. Monica Rambeau Declaration ("Rambeau Decl.") 1. Ms. Harkness assigned Ms. Maximoff to work on H.P. and S.P.'s case. Woo Decl. ¶ 10. H.P. and S.P. insisted they found a note in their paperwork from Ms. Harkness's office on

May 23, 2008. Woo Decl. ¶ 10. The note contained a phone number and advised the reader a woman named "Scarlet" could "assist them with obtaining immigration paper work 'like an OSUP'; so that they could apply for a state Driver's License and an Employment Authorization Card." Woo Decl. ¶ 11. H.P. did not recognize the note's handwriting and could not produce it for inspection. Woo Decl. ¶ 11.

After receiving the note, H.P. called the phone number, and a man answered the call. Woo Decl. ¶ 12. The man said he could get them, "what they needed" for $10,000 in cash, to which H.P. agreed. Woo Decl. ¶ 12. H.P. informed Agent Woo other clients of Ms. Harkness in his neighborhood also obtained fraudulent immigration paperwork from "Scarlet" until 2010. Woo Decl. ¶ 13. After an extensive search, Agent Woo could not contact Ms. Harkness or find her whereabouts. Woo Decl. ¶ 14-15. Agent Woo then "tabled" the investigation to tend to an undercover task force on August 15, 2018. Woo Decl. ¶ 17.

It was not until February 14, 2019 that Agent Woo returned to the investigation. Woo Decl. ¶ 17. Upon returning to the case, Agent Woo visited H.P. and S.P.'s neighborhood to speak with other former clients of Ms. Harkness. Woo Decl. ¶ 18. One client, R.B., stated he also received a note to contact "Scarlet" and produced the note. Woo Decl. ¶ 19. Agent Woo called the number on the note but found it was disconnected. Woo Decl. ¶ 20. Agent Woo discovered the phone number was associated with the Law Offices of Agatha Harkness. Woo Decl. ¶ 22. Still unable to locate Ms. Harkness, Agent Woo proposed Ms. Maximoff was the individual known as "Scarlet," who encouraged or induced aliens to reside in the United States. Woo Decl. ¶ 24.

In reviewing Ms. Maximoff's flight records, Agent Woo noted there was substantial international travel by Ms. Maximoff in the last twenty years. Woo Decl. ¶ 27. However, Ms. Maximoff travels frequently for work as Policy Counsel for an international medical research company to offices in Argentina, the UAE, and Switzerland. Rambeau Decl. 2. Furthermore, Ms. Maximoff often travels internationally to visit her husband and two sons who reside in Munich, Germany, and frequently meet in various other countries. Jarvis Odinson Declaration ("Odinson Decl.") 1.

Ms. Maximoff appeared as counsel of record or "certified legal intern" on forty cases while working for Ms. Harkness. Woo Decl. ¶ 28. However, Agent Woo, with fifteen years of experience working as a DHS Special Agent, could not locate fifteen of those former clients. Woo Decl. ¶ 31. Additionally, Agent Woo found only eight former clients supported his case against Ms. Maximoff, but Agent Woo failed to report which of the eight, if any, received a note from "Scarlet." Woo Decl. ¶ 29.

ARGUMENT

I. LEGAL STANDARD

The sole function of a motion to dismiss is to "test the sufficiency of the indictment to charge an offense." *United States v. Luros*, 243 F. Supp. 160, 165 (N.D. Iowa 1965). A court is not free to consider evidence not appearing on the face of the indictment, the sufficiency of the indictment "must be determined from the words of the indictment." *Id.* When ruling on a motion to dismiss an indictment, all well-pleaded facts are taken to be true. *Id.* An indictment is sufficient if it (1) alleges all of the elements of the offense, (2) fairly informs the defendants of that which they must be prepared to meet

in the preparation of their defense, and (3) enables them to plead an acquittal or a conviction in bar of future prosecutions for the same offense. *Id.* at 167.

A motion to dismiss in criminal law is constrained by a defendant's constitutional right to a jury trial, so the court cannot weigh factual findings that must be left for jury determination. *United States v. Young*, 694 F. Supp. 2.d 25, 27 (D. Maine 2021).

II. BECAUSE THE GOVERNMENT NEVER INSTITUTED THE INFORMATION WITHIN THE MEANING OF § 3298 AND MS. MAXIMOFF WAS NEVER GIVEN NOTICE OF THE INFORMATION UNDER SEAL, THE INDICTMENT WAS NOT TIMELY RETURNED AND THE MOTION TO DISMISS SHOULD BE GRANTED.

Under 18 U.S.C. § 3298, "no person shall be prosecuted, tried, or punished for any non-capitol offense . . . under section 274(a) of the Immigration and Nationality Act unless the indictment is found or the information is instituted no later than 10 years after the commission of the offense." 18 U.S.C. § 3298. In the instance that 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 or information." 18 U.S.C. § 3288. However, the Government cannot file a new indictment "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." 18 U.S.C. § 3288. Furthermore, pursuant to § 3288 the government can only file an indictment after the limitations has run when "the reason for dismissing the information is other than failure to institute the information during the applicable statute of limitations." *United States v. Stewart*, 425 F. Supp. 2d 727, 732 (E.D. Va. 2006).

Here, the Government did not institute the Information to comply with § 3298, as the Information was not accompanied by a waiver of indictment by Ms. Maximoff. As such, the Government was not permitted to file a new indictment under § 3288; thus the Indictment was not timely returned, and the Court should grant the Motion to Dismiss. Alternatively, Ms. Maximoff never received notice of the sealed Information when due process, as well as a matter of public interest, requires a defendant have adequate notice of the charges against them. Therefore, the Court should grant the Motion to Dismiss.

A. The Information Was Never Instituted Because Ms. Maximoff Never Waived Her Right to Prosecution by Indictment, Barring the Government from Tolling the Limitation Under § 3288.

An offense punishable by imprisonment for more than one year may be prosecuted 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). When an information against a "defendant [is] not accompanied by a waiver of indictment and . . . the government [does] not subsequently obtain a waiver prior to the limitations period expiration, the [i]information [is] not instituted." *United States v. B.G.G.*, 20-cr-80063-DMM at *12 (S.D. Fla. Jan. 1, 2020). Furthermore, a "criminal information is not a 'charging' instrument upon which the government can automatically proceed to prosecution after the statute of limitations has run its course." *United States v. Sharma*, 14-CR-61 at *4 (S.D. Tex. May 19, 2016).

The *B.G.G.* court held because the information against the defendant was not accompanied by a waiver of indictment and because the government did not subsequently obtain a waiver prior to the limitations period expiration, the information was not

instituted within the meaning of § 3282.[1] 20-cr-80063-DMM at *12. In *B.G.G.*, the government filed the information three days before the statute of limitations expired, without a waiver, and sought its dismissal without prejudice on September 2, 2020, to which the court ultimately did not grant. *Id*. at 2.

The *B.G.G.* court notes that an information is a charging instrument that, aside from apprising a defendant of the charges against them, can initiate a prosecution. *Id*. at 12. Therefore, the government's use of an invalid charging document, an information not accompanied by a waiver of indictment, as a mere mechanism for extending a statute of limitations period would be inconsistent with the Fifth Amendment and Federal Rule of Criminal Procedure 7. *Id*. at 12. The court asserted that Congress intended § 3288 and § 3289 to toll the statute of limitations when an instituted information, pursuant to § 3282 comported with Rule 7(b). *Id*. at 18. Further adding, "To hold otherwise would allow the Government's requested dismissal without prejudice to toll the already-expired, five-year statute of limitations period even though the same information is invalid for purposes of prosecution." *Id*. at 12.

Here, the Information did not comport with Rule 7 because Ms. Maximoff never waived indictment by a grand jury, meaning the Information was never considered instituted under § 3298; therefore, the Information cannot be tolled under § 3288. The Government filed the Information, but then moved to dismiss the Information the very

[1] The Government has conceded "there is no material difference between the language in sections 3282 and 3298." Email from Samuel Wilson to James B. Barnes (September 24, 2021).

next day without ever seeking waiver from Ms. Maximoff. In addition, it was not until her initial appearance in court that Ms. Maximoff became aware of the Information and exact charges of the Indictment filed against her, which were both under seal until her arrest. Therefore, Ms. Maximoff was deprived of notice and the ability to exercise her right to waiver, making an extension under § 3288 improper.

The Government's use of an information to toll the statute of limitations without a waiver of indictment in this case is similar to the case of *B.G.G.* where the court found that while the government filed the information prior to the expiration of the statute of limitations, the court concluded that the unconsented information was not instituted within the meaning of § 3282 and could not be used to toll the statute of limitations under § 3288. Accordingly, the Information filed against Ms. Maximoff was not instituted within the meaning of § 3298; therefore, an extension under § 3288 is improper and the Motion to Dismiss should be granted.

B. The Government Did Not Give Timely Notice of the Sealed Information, Which Does Not Comport with the Principles of Due Process and Fairness.

An information must be a "plain, concise, and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). A properly instituted information gives the defendant "notice of the allegations of the charges contained therein." *United States v. Holmes*, 18-CR-000258-EJD at *9 (N.D. Ca. October 13, 2020). The statute of limitations serves to "protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time." *Sharma*, 14-CR-61 at *4. Furthermore, notice to the defendant is the

"central policy underlying the statutes of limitations . . . the defendant has been placed on notice of the charges against him. That is, he knows that he will be called to account for certain activities and should prepare a defense." *United States v. Pacheco*, 912 F.2d 297, 305 (9th Cir. 1990).

In *Burdix-Dana* the court noted that the issue of notice was not relevant to its analysis in their decision as to whether an information was instituted within the meaning of § 3298, as the defendant in that case did have notice. *United States v. Burdix-Dana*, 149 F.3d. 741, 743 n.3 (7th Cir. 1998).

Here, in contrast, Ms. Maximoff had no notice of either the Information or the Indictment until over a year after the limitation period had expired. The Government filed the Information under seal on July 22, 2020, two days prior to the limitation expiring on July 24, 2020. However, Ms. Maximoff did not learn she was under investigation until the case was unsealed after her arrest and did not learn of the exact charges until her initial appearance on September 23, 2021.

Furthermore, the Government might assert it had to file under seal because Ms. Maximoff was a flight risk due to her frequent international travel. Although Ms. Maximoff frequently traveled abroad, such travel has been due to her work as Policy Counsel for an international medical research company. In addition, Ms. Maximoff, when not traveling for work, travelled to visit her husband and two children who reside in Munich, Germany. The Government's assumption that Ms. Maximoff had motive to flee was presumptuous and inaccurate and did not warrant filing under seal.

The purpose of a limitations is to protect defendants from having to defend themselves against charges when the basic facts may have become obscured by time. Timely notice is central to limitations as it gives the defendant knowledge of the charges against them and fair time to prepare a defense. Ms. Maximoff was not given notice until eleven years after the charged crimes allegedly occurred. Ms. Maximoff is now forced to set up a defense in which she has had no timely notice, and where the evidence is surely to be impacted by the gap in time between when the crime was allegedly committed and when Ms. Maximoff finally obtained notice. Thus, Ms. Maximoff had no timely notice of the Information and because notice is central to statute of limitations, and due process, the court should dismiss the Indictment.

III. BECAUSE THE GOVERNMENT WAS NOT REASONABLY DILIGENT AND COVID DOES NOT CONSTITUTE "EXTRAORDINARY CIRCUMSTANCES," EQUITABLE TOLLING IS IMPROPER AND THE MOTION TO DISMISS SHOULD BE GRANTED.

Generally, a litigant 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." *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005).

The Government did not exercise reasonable diligence when they caused two periods of unduly delay without justifiable cause. Therefore, equitable tolling is not applicable. Additionally, Covid did not constitute "extraordinary circumstances" warranting equitable tolling because those circumstances did not entirely impede the

Government's ability to comply with the limitations period. Therefore, equitable tolling is not applicable.

A. The Government Was Not Reasonably Diligent Because They Caused Multiple Unduly Delays and Still Exceeded the Original Time Limitation Even After Deducting the Tolled Period.

A party seeking equitable tolling must exercise reasonable diligence "throughout the period [she] seeks to toll." *Harper v. Ercole*, 648 F.3d 132, 138 (2d Cir. 2011). Reasonable diligence means the seeking party must have "act[ed] as diligently as reasonably could have been expected under the circumstances." *Id.*

The Government did not exercise reasonable diligence because Agent Woo completely abandoned the Maximoff investigation for an extended period of time. The fraudulently obtained driver's license Agent Woo discovered was issued on June 2, 2008. From his interview with H.P., Agent Woo knew other immigrants in the neighborhood obtained fraudulent paperwork until 2010. At this point, Agent Woo understood that any information or indictment concerning this investigation would be time barred in either 2018 or 2020, meaning Agent Woo had, at best, under two years left in the ten-year limitation to complete his investigation and secure an indictment. In the face of these facts, and with fifteen years of experience investigating immigration offenses, Agent Woo still decided to altogether abandon the investigation for an undercover job (that may presumably have had no fixed end date), stopping the investigation cold for six consecutive months. By the time Agent Woo returned, he had just over a year to complete his investigation and indict. Agent Woo's decision to "table" the Maximoff investigation for an extended amount of time knowing that he only had a small slice of

the limitations period left to complete the investigation was imprudent, and closer to negligent than reasonably diligent.

On top of that, there was *another* six-month delay by the Government, demonstrating further a lack of reasonable diligence. To determine whether a petitioner has been exercising reasonable diligence, a court should evaluate the petitioner's conduct both before and after the existence of the "extraordinary circumstance." *Smith v. Davis*, 953 F.3d 582, 593 (9th Cir. 2020) (quoting *Pace*, 544 U.S. at 418-19). The Government insists it was ready to prosecute on July 22, 2020 (two days before the limitation expired) and that Covid prevented its otherwise ready case because of the grand jury suspension. However, that suspension ended March 29, 2021 (eight months *after* the limitation expired) yet the Government still took an additional six months to finally indict Ms. Maximoff with an information identical to the one filed over a year earlier, indicating the second six-month delay was also without justifiable cause and therefore, unreasonable. The Government unreasonably caused two six-month delays—one of the six-month delays following the tail end of a one-year Covid-induced delay. During these delays, the Government did not complete any substantive work furthering the investigation, indicating no justifiable cause for the delay and a lack of reasonable diligence.

Additionally, the Government lacked reasonable diligence because even when accounting for the alleged "extraordinary circumstances," the Government still exceeded the original time limitation prescribed by § 3298. The Supreme Court stated, "Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by

subtracting from the full limitations period whatever time ran before the clock was stopped." *U.S. v. Ibarra*, 502 U.S. 1, 4 n.2 (1991); *see also Artis v. District of Columbia*, 138 S. Ct. 594, 602 (2018). This 'stop clock' approach means that once extraordinary circumstances end, the original time limitation commences from its last stopping point. *Harper*, 648 F.3d at 140; *see also Tristar Corp. v. Freitas*, 84 F.3d 550, 553 (2d Cir. 1996) ("Equitable tolling of a statute means only that the running of the statute is suspended, not that the limitations period begins over again.").

Here, the Government exceeded the ten-year limitation prescribed by § 3298. From the time of Ms. Maximoff's alleged crime to the Government finally indicting her, 134 months (11.2 years) had passed. The grand jury suspension lasted 12 months (1 year). Subtracting that amount from the total time, still leaves the Government's timeliness (or lack thereof) in excess of the ten-year limitation by two months (122 months total). Therefore, the Government's failure to timely indict evinces its failure to act with reasonable diligence, placing equitable tolling out of its reach. *See Baldwin County v. Brown*, 466 U.S. 147, 151 (1984) ("One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence."). Because the Government caused two unjustifiable delays and exceeded the limitations period even after deducting the grand jury suspension, it did not exercise reasonable diligence, and the Motion to Dismiss should be granted.

B. Covid Does Not Constitute "Extraordinary Circumstances" Because It Did Not Wholly Impede the Government's Ability to Comply With the Limitations Period.

Extraordinary circumstances alone are not enough to secure equitable tolling; a party must also show a causal link between those circumstances and his failure to comply with the limitations period. *Harper*, 648 F.3d at 137. Additionally, the term "extraordinary" refers not to the uniqueness of a party's circumstances, but rather to the severity of the obstacle impeding compliance with a limitations period. *Id.*; *see also Bolarinwa v. Williams*, 593 F.3d 226, 231–32 (2d Cir. 2010); *Diaz v. Kelly*, 515 F.3d 149, 154 (2d Cir. 2008).

Here, Covid did not wholly impede the Government's ability to comply with the limitations period. Although Covid prevented an indictment by grand jury, the Government had other options to comply with the limitations period. *See U.S. v. Levine*, 658 F.2d 113, 120-21 (3d Cir. 1981) ("It is also possible for a defendant knowingly and intelligently to waive the statute of limitations, thus sanctioning a later indictment which, absent such a waiver, would be untimely"); *United States v. Meeker*, 701 F.2d 685, 688 (7th Cir. 1983) ("The purposes of a time bar are not offended by a knowing and voluntary waiver of the defense by the defendant"). However, the Government chose to not follow through with compliance. No good faith effort was made on the Government's part to notify Ms. Maximoff of the charges to secure a waiver or institute the Information. Additionally, as previously discussed, once the grand jury suspension ended, the Government was not impeded by the effects of Covid, but still waited an additional six months before indicting Ms. Maximoff. Covid did not prevent the Government from filing an information; nor did Covid prevent the Government from giving Ms. Maximoff notice and instituting an information, or obtaining a Rule 7 waiver. The only thing Covid

prevented was indictment by grand jury. This alone did not wholly impede the Government from complying with the limitations period. Therefore, the extraordinary circumstances here do not warrant equitable tolling, and the Motion to Dismiss should be granted.

IV. BECAUSE CRIMINAL LIMITATIONS PURPORT TO PROTECT DEFENDANTS, AND EQUITABLE TOLLING HERE DOES NOT COMPORT WITH THE INTERESTS OF JUSTICE, THE MOTION TO DISMISS SHOULD BE GRANTED.

Equitable tolling is not proper here because it would allow exactly what § 3298 purports to protect criminal defendants against—the inaccuracy and unfairness from stale evidence and dull memories that come with an unduly delayed trial. *See U.S. v. Midgley*, 142 F.3d 174, 177 (3d Cir. 1998).

Federal courts invoke the doctrine of equitable tolling "only sparingly." *Id.* at 179. In *Midgley*, the court refused the Government's argument that equitable tolling should be used to reinstate dismissed charges because the five-year limitations period set forth in § 3282[2] "established a fixed limitation period with no exception." *Id.* at 180. The *Midgley* court agreed that a criminal limitations period is a defendant's "primary protection" against prosecutorial delay. *Id.* at 177. Absent a statute of limitations, an unending possibility of prosecution impairs a defendant's constitutional rights, prolongs anxiety and concern over pending charges, and erodes a defendant's ability to present an effective defense. *Id.* at 177-78 (citing *U.S. v. Davis*, 487 F.2d 112, 118 (5th Cir. 1973)).

[2] Supra note 1.

Here, the Government's unduly delays have eroded Ms. Maximoff's ability to defend herself. The Government possesses vast resources that are unavailable to common citizens like Ms. Maximoff. However, even the Government in this case struggled with the investigation. Agent Woo could not track down Agatha Harkness, the one individual who had a solid tie to all those whom Agent Woo discovered had purchased forged papers, and the one individual who owned the firm that hosted the phone number with which to purchase the illicit papers. Furthermore, Agent Woo could not contact fifteen of Ms. Harkness' former clients for unknown reasons. The Government's own struggle with the investigation is a testament to how much more difficult it will be for Ms. Maximoff to assert her defense with even less resources and time pitted against her—exacerbated by the Government's multiple, unreasonable delays.

Additionally, the interests of justice do not comport with rewarding neglect with an extension at the expense of Ms. Maximoff's right to a fair trial. If the court in *Midgley* was wary of unfairness against the criminal defendant due to the staleness of criminal charges after a five-year time limitation, then it would bristle at the thought of what erosion would occur when that limitation is doubled. The ten-year limitation period for INA offenses diminishes by twofold Ms. Maximoff's chances of fair adjudication. The Government completely set aside the Maximoff case for what amounts to an entire year. Ms. Maximoff should not be penalized because the USAO's calendar was busy (an inequitable result, indeed). Nor should the Court reward the USAO with a time extension for such an inexcusable reason. Ms. Maximoff, and for that matter *all* criminal defendants should not be the ones who pay for the staffing deficiencies of a prosecutorial office. This

comports with the principle that "equity will not intervene to reward negligence." *Harper*, 648 F.3d at 138. There is no justification for the Government's failure to timely indict, as such the Indictment should be dismissed.

Furthermore, tolling in this case would not be equitable because the Government's unduly delays were not caused by Ms. Maximoff attempting to evade or mislead. The Supreme court stated, "Absent a showing of intentional inducement or trickery by the defendant, a statute of limitations should be tolled only in the rare situation where equitable tolling is demanded by sound legal principles as well as the interests of justice." *Midgley*, 142 F.3d at 179. There was no inducement or trickery on Ms. Maximoff's part that prevented the Government from timely indicting. As mentioned before, she was completely unaware of the investigation until a year after the limitation had expired. Moreover, Ms. Maximoff is not a danger to society. Indeed, Ms. Maximoff is a quality member of society—an attorney recognized as an officer of the court. Ms. Maximoff has maintained the same ethical integrity as any other member of the bar in good standing, and continued to serve her community until she was placed in custody pending this case. The mere suspicion that Ms. Maximoff might have committed INA offenses over eleven years ago is not enough to induce equitable tolling. Better articulated by the *Midgley* court, "However tempting it may be to create equitable exceptions to bright line rules, we must concur with Chief Judge Rambo's observation in *Gaither* that 'the very existence of a statute of limitations entails the prospect that wrongdoers will benefit,' and that this reason alone cannot serve as the basis for an exception to the statute." 142 F.3d at 180.

As such, equitable tolling here is improper because it does not comport with legislative intent and the interests of justice.

CONCLUSION

For the reasons stated above, the Court should grant the Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 29, 2021, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF which will send a notice of electronic filing to the following:

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