IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STETSON

Case No. 1:21-cr-36

United States of America

v.

Wanda Maximoff,

Defendant.

Defendant's Memorandum of Law in Response to the Government's Motion for Detention and in Support of the Defendant's Motion to Dismiss the Indictment

/s/ 119
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INTRODUCTION AND REQUEST FOR RELIEF

Two days. The issue at hand focuses on the last two days of a ten-year statute of limitations. Order Granting Motion for Voluntary Dismissal of Information at 2. Despite the 3,650 days available, the only action taken by the Government was the filing of an information two days before that deadline. The fate of a young woman, Wanda Maximoff, and her ability to have a fair trial, rests on those two days.

The Government filed that very information without obtaining a Rule 7(b) waiver, by which Mrs. Maximoff, with knowledge of the charges, could waive her right to indictment in open court. Transcript of Initial Appearance l, l. 71–75. But without a waiver, the July 22, 2020 information is invalid under Rule 7(b). Yet the Government asserts that this improper information tolled the statute of limitations under 18 U.S.C. § 3298. Transcript of Initial Appearance, l. 63–65. The Government subsequently indicted Mrs. Maximoff on September 23, 2021, over a year after the statute of limitations passed. Indictment at 3. Because of this abrogation of Mrs. Maximoff's rights, the Defense asks that the Court dismiss the indictment against her.

This Court should dismiss the Indictment first because the Rule 7(b)-waiverless information is untimely and invalid; and second, because the Government is not entitled to equitable tolling of the statute of limitations.

Defendants' rights should not fall to the wayside for semantic technicalities and government delay. The Government waited until the last moment to file an information in this case and did not even properly do so, because it did not obtain a waiver from Ms. Maximoff. When given a second opportunity to delay obtaining an indictment due to the

closure of grand jury proceedings, the Government again waited until the last moment. The Court should not reward the Government's repeated delay and should dismiss the Indictment.

STATEMENT OF FACTS

Wanda Maximoff is an attorney and mother, who immigrated to the United States at a young age. Rambeau Decl. at 1. In 2007, during her third year of law school, she began working as a clerk for an immigration attorney. Rambeau Decl. at 3. She worked in that office for several years. Woo Decl. at ¶ 31. She now works as policy counsel for an international medical research company and travels the world while keeping her roots in Westview, Stetson. Rambeau Decl. at 2. Over these years, Ms. Maximoff has lived a relatively peaceful life.

But unbeknownst to Ms. Maximoff, behind the scenes, the Government was investigating her for events that occurred during her time as an immigration attorney. This investigation began in 2018 and ended in 2019. Woo Decl. at ¶¶ 5, 30. But the first legal action the Government took was on July 22, 2020, a mere two days before the statute of limitations lapsed. *See* Order of Dismissal at 1. Before that two-day deadline, the Government filed a sealed information, inaccessible to Mrs. Maximoff. Order of Dismissal at 1. Judge Elijah Bradley dismissed that information the next day. Order of Dismissal at 1.

At the time, the COVID-19 pandemic caused the ongoing suspension of grand juries. When grand juries reconvened on March 29, 2021, the Government once again waited. This time, it waited until a mere eight days remained before the new deadline to

indict Ms. Maximoff. The Government argues the suspension of the Grand Jury from March 23, 2020 to March 29, 2021 makes this information both valid and eligible for equitable tolling of the statute of limitations. The day Maximoff was arrested, September 23, 2021, was the first time she learned of these allegations.

ARGUMENT

I. The Indictment should be dismissed because the Government did not comply with the statute of limitations.

"Statutes of limitations are primarily designed to assure fairness to defendants," and nowhere is such fairness more important than in the criminal justice system. *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 428 (1965). Indeed, life and liberty are at stake. Accordingly, the Supreme Court has upheld statutes of limitations as tools to "limit exposure to criminal prosecution to a certain fixed period of time . . . ." *Toussie v. U.S.*, 397 U.S. 112, 114 (1970). Additionally, statutes of limitations incentivize law enforcement to promptly investigate criminal activity. *Id.* at 115.

But when police drag their feet in charging a defendant after concluding their investigation, the policy considerations behind limitations periods are thwarted. Therefore, "[w]hen as here the necessary information is gathered after the claim arose but before the statute of limitations has run, the presumption should be that the plaintiff could have brought suit within the statutory period and should have done so." *Cada v. Baxter Health Corp.*, 920 F.2d 446, 453 (7th Cir. 1990).

The Government completed its investigation of Ms. Maximoff in 2019. Woo Decl. at ¶ 31. Had the Government promptly charged her at that time, there would be no issue in

this case. The Court should hold the Government accountable for its failure to swiftly prosecute Ms. Maximoff and dismiss the Indictment for two reasons: first, Rule 7(b) reflects a Congressional judgment to protect the critical right to prosecution by indictment. Without a 7(b) waiver, prosecution by information is invalid and cannot toll the statute of limitations. Second, the plain language of Rule 7(b) demonstrates no difference between "prosecuted" and "instituted" for the purposes of waiving indictment.

A. An information without a Rule 7(b) waiver is "virtually meaningless," and has no power to toll the statute of limitations.

One principle shows prominence throughout criminal law: the protection of defendants' rights. From the right against self-incrimination to the right to a fair and speedy trial by a jury of one's peers, the Constitution and statutory law emphasize the importance of defendants' rights. Federal Rule of Criminal Procedure 7(b) enshrines one of these protections: the right against being prosecuted by information without notice.

This right is truly critical because of the fundamental distinction that exists between an indictment and an information. While indictments are returned by a grand jury after the Government shows probable cause and inherently provide notice to defendants of the pendency of a case against them, informations are filed by the Government alone. Without Rule 7(b), the Government could theoretically prosecute cases against defendants who never once knew they were under investigation. But such a situation is not strictly hypothetical – the Government attempts to argue in this very case that its waiverless information is sufficient to toll the statute of limitations in its favor.

Accordingly, Rule 7(b) requires a waiver of the defendants' right to indictment before they may be prosecuted by information. For a waiver to be valid, it must occur in "open court and after the defendant is advised of the nature of the charge and of their rights." Fed. R. Crim. P. 7(b). This protects defendants' rights and ensures that they receive a fair trial. Because a waiver's purpose is to protect defendants from being prosecuted by information without their knowledge, an interpretation of Rule 7(b) that allows a waiverless information to toll the statute of limitations ignores both the purpose of waivers and the purpose of statutes of limitations themselves.

When construing statutes, courts should consider an application that avoids absurd results. *U.S. v. Turkette*, 452 U.S. 576, 580 (1981); *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 543 (1940) (holding that when a reading of the statute would create absurd results, the court must look to the purpose of the statute). The court, furthermore, must avoid a reading that would defeat the plain purpose of the statute and shock general morals or common sense. *Crook v. Harrelson*, 282 U.S. 55, 59–60 (1930); *Bob Jones U. v. U.S.*, 461 U.S. 574, 586 (1983); *U.S. v. Jensen*, 532 F.Supp.2d 1187, 1197 (N.D. Cal. 2008). The purpose of Rule 7(b) in allowing waivers is to protect defendants from an unfair trial. But allowing the court to indefinitely toll statutes of limitations simply by filing an information would defeat the purpose of Rule 7(b) and statutes of limitations in general. Rather than protecting defendants' rights and adhering to the statute of limitations, that interpretation encourages prosecutors to file waiverless informations to further stall limitations periods. That interpretation would make a case that ought to be barred by a statute of limitations

effectively limitless. An interpretation of Rule 7(b) that deprives defendants of their constitutional rights shocks both general morals and common sense.

The Fifth Amendment requires the government to prosecute felonies by indictment. U.S. Const. Amend. V. Every defendant accused of a felony has a right to prosecution by indictment. *Id.* An information must be accompanied by a valid waiver *before* a court has subject matter jurisdiction over the case. *See United States v. Macklin*, 523 F.2d 193, 196–97 (2d Cir. 1975) ("Unless there is a valid waiver, the lack of an indictment in a (federal) felony case is a defect going to the jurisdiction of the court") (citing 1 Wright, Federal Practice and Procedure: Criminal § 121 at 213).

Thus, until a defendant has waived indictment under Rule 7(b), an information filed with the court cannot perform the same "charging function" as an indictment. *United States v. Machado*, No. CRIM.A.04-10232-RWZ, 2005 WL 2886213 at *2 (D. Mass. Nov. 3, 2005). With no waiver under Rule 7(b), an information is "virtually meaningless." *Id.* Accordingly, "[i]t defies logic and reason that the court may accept an information without waiver for the purpose of applying the statute of limitations, when that same document is 'meaningless' for purposes of subject matter jurisdiction and prosecution." *Id.*

If a court's subject matter jurisdiction in the case of a prosecution by information hinges on the existence of a waiver, an information without a waiver should not deprive defendants of their constitutional rights.

B. The plain language of the Federal Rules of Criminal Procedure shows no distinction between "instituted" and "prosecuted" for purposes of waiving indictment.

Rule 7(b) protects an integral right of defendants and should be construed in accordance with protecting that right. In addition to the policy considerations discussed above, the plain language of Rule 7(b) and 18 U.S.C. § 3298 supports the interpretation that "prosecution" is an umbrella term that inherently includes the "institution" of charges. Thus, there is no rational distinction between "institution" and "prosecution" for the purposes of applying Rule 7(b). A defendant's waiver must come before any step in the prosecution process starts—including the institution of an information.

1. Federal Rule of Criminal Procedure 7(b) encompasses the filing of an information.

The issue of whether a waiver renders an information invalid involves the interplay of 18 U.S.C. § 3298, the applicable statute of limitations, and Federal Rule of Criminal Procedure 7(b). The statute of limitations makes a distinction between an indictment being "found" and an information being "instituted." An indictment is found; an information is instituted. "Found" and "instituted" are the terms for how the prosecution process is commenced, simply in different ways. These terms are inseparable from the process of a prosecution. Thus, it makes little sense to distinguish "institute" from "prosecute" when the term "institute" falls under the umbrella of a "prosecution."

Rule 7(b) of the Federal Rules of Criminal Procedure requires the government to obtain a waiver from the defendant before prosecuting by information. The Rule only uses the term "prosecution." In fact, when the word "institute" is used in the Federal Rules of

Criminal Procedure, it is referenced as *part* of the prosecution process. *See* Fed. R. Crim. P. 12 ("instituting the prosecution"). The technical definitions of "institute" and "prosecute" support this interpretation

2. "Institution of charges" is synonymous with "prosecution."

When interpreting the meaning of a statute, the Court must first look at the statutory language, and give the words their ordinary meaning. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019). Generally, this involves looking at the dictionary definitions of words. *MCI Telecommunications Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225–26 (1994). But when a statute uses a term of art or legal term, the court assumes Congress intended it to have that established meaning. *Air Wisconsin v. Hoeper*, 571 U.S. 237, 248 (2014); *Sekhar v. U.S.*, 570 U.S. 732–33 (2013); *F.A.A. v. Cooper*, 566 U.S. 284, 292 (2021); *Corning Glass Works v. Brennan*, 417 U.S. 188, 201 (1984); *McDermott Intern. Inc. v. Wilorder*, 498 U.S. 337, 342 (1991). Both "institute" and "prosecute" are legal terms. The proper dictionary, therefore, is *Black's Law Dictionary*. *See Hoeper*, 571 U.S. at 248.

Black's Law Dictionary defines "institute" as "to begin or start; commence." INSTITUTE, Black's Law Dictionary (11th ed. 2019). It defines "prosecute" as "to commence and carry out (a legal action) . . . . 2. To *institute* and pursue a criminal action against (a person)." PROSECUTE, Black's Law Dictionary (11th ed. 2019) (emphasis added).

Because the definition of "prosecution" includes the phrase "to institute," the institution of an information is merely the beginning of a prosecution. Therefore, a statute or rule that uses the term prosecute inherently refers to the beginning of the process. Rule

7(b) waivers, therefore, apply to the institution of claims by information, as they are a part of prosecution.

The Government's case against Ms. Maximoff, tenuous as it already is, must fail. To allow a waiverless information to toll the statute of limitations would require the Court to ignore the plain language of Rule 7(b) and clear Congressional intent to protect defendants. The rights of defendants, inconvenient as they may be for the Government, must prevail. Rather than promptly charging Ms. Maximoff in 2019 when Agent Woo completed his investigation, the Government slept on its case for two more years, landing squarely in the middle of a global pandemic. The pandemic afforded the Government an additional year and a half to pursue an indictment, and the Government once again waited until just days before the limitations period expired. The Court should not reward the Government's apathy in pursuing its case against Ms. Maximoff and should find the information to be untimely and invalid.

Furthermore, because the information in this case was invalid, the Government is not entitled to any equitable remedies to toll the statute of limitations.

II. The Government is not entitled to equitable tolling of the statute of limitations.

Criminal statutes of limitations reflect a legislative policy decision to incentivize prompt and efficient prosecution at the expense of the potential inability to hold a criminal accountable for his actions. The Court should acknowledge that policy decision, respect the separation of powers, and refuse to equitably toll the statute of limitations in this case.

Ms. Maximoff is accused of violating 8 U.S.C. § 1324(a)(1)(A)(iv), (v), also codified as § 274(a) of the Immigration and Nationality Act, by actions allegedly taken

between May 31, 2007, and July 24, 2010. For a violation of this statute, an indictment or information must be filed "not later than 10 years after the commission of the offense." 18 U.S.C. § 3298 (West). The Government filed an information under seal on July 22, 2020, which was dismissed the next day, but did not file an indictment in open court until September 21, 2021.

For the reasons discussed above, the Government's Indictment was untimely and invalid. Moreover, the Government is not entitled to equitable tolling of the statute of limitations in this case for three reasons: first, equitable tolling is not generally applied to salvage an untimely Government indictment and no policy consideration compels it here; second, the plain language of the statute does not allow for tolling; and third, the rule of lenity further prohibits the application of equitable tolling to this case.

A. Equitable tolling is not generally used to salvage an untimely indictment and should not be so used here.

Disallowing equitable tolling accords both with established principles of criminal law and sound policy judgment. Courts "invoke the doctrine [of equitable tolling] only sparingly, and under very narrow circumstances." *U.S. v. Atiyeh*, 402 F.3d 354, 367 (3rd Cir. 2005) (quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 100 (1990)). The *Atiyeh* court expressly rejected equitable tolling of the criminal statute of limitations where the delay was not caused by the defendant herself: "[the defendant] did not induce the Government's current situation, and principles of justice do not demand that the statute of limitations be tolled under the present circumstances." *Id.*

Here, Ms. Maximoff did nothing to "induce" the Government's statute of limitations problem. She is as much a victim of the global instability caused by the COVID-19 pandemic as the Government, and justice does not support tolling the statute of limitations against her. The Government had ten years to pursue its claim against Ms. Maximoff, and their failure to do so before the COVID-19 pandemic suspended the grand jury should not penalize her. *See U.S. v. Midgley*, 142 F.3d 174, 179 (3rd Cir. 1998) (denying the Government's request for equitable tolling, in part because the defendant "did not solely by his own design contrive a rare situation where equitable tolling is demanded by sound legal principles").

If anything, tolling the statute of limitations cuts *against* the principles of justice by giving the Government another bite at the proverbial apple: "[s]tatutes of limitations 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." *CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014); *see also U.S. v. Levine*, 658 F.2d 113, 127 (3rd Cir. 1981) ("[l]imitations statutes, however, are intended to foreclose the potential for inaccuracy and unfairness that stale evidence and dull memories may occasion in an unduly delayed trial . . . and, by encouraging investigation of recent crimes, contribute to a rational allocation of prosecutorial resources").

And because the criminal statute of limitations "require[s] . . . diligent prosecution of known claims," this Court should not bless the Government's ten-year wait to prosecute Ms. Maximoff. *Id.* If the Government has a valid claim against a criminal defendant, justice demands it pursue that claim promptly, not wait until two days before the limitation period

lapses. Such "gotcha" litigation is exactly what statutes of limitations are designed to prevent. *See Burnett v. New York Cent. R. Co.*, 380 U.S. 424, 428 (1965) ("[I]t is unjust not to put the adversary on notice to defend within the period of limitation and that . . . right to be free of stale claims in time comes to prevail over the right to prosecute them.").

B. The plain language of § 3298 shows a lack of Congressional intent to allow for equitable tolling.

Since equitable tolling extends a limitation period statutorily imposed by Congress, the question of whether to toll a limitations period is "a question of statutory intent." *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014). Here, the applicable statute of limitations reads:

> No person shall be prosecuted, tried, or punished for any non-capital offense or conspiracy to commit a non-capital offense under section 1581 (Peonage; Obstructing Enforcement), 1583 (Enticement into Slavery), 1584 (Sale into Involuntary Servitude), 1589 (Forced Labor), 1590 (Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor), or 1592 (Unlawful Conduct with Respect to Documents in furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor) 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 (West). Both parties agree that the Court's primary mission is to give effect to Congressional intent. And a statute that is clear and unambiguous is to be applied as written: "courts must presume that the legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous then, this first canon is also the last: judicial inquiry is complete." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). The statute does not indicate any provision for equitable considerations to factor into the question of whether to toll the prescribed limitations

period. It is therefore not the Court's role to insert what the Government deems to be omitted: "we do not – we cannot – add provisions to a federal statute." *Alabama v. North Carolina*, 560 U.S. 330, 352 (2010).

The statutory language is unambiguous and does not show intent to allow equitable tolling. The plain meaning of "not later than" is "at any time prior to," and allows the Government ample time to file an indictment or institute an information. *Hughes v. United States*, 114 F.2d 285, 287 (6th Cir. 1940); *see also Irwin*, 498 U.S. at 100 (White, J. Concurring) (noting that the statute at issue manifested no Congressional intent to allow for equitable tolling when it merely obligated a plaintiff to file his lawsuit "within thirty days" and arguing that "Congress was entitled to assume that the limitation period it prescribed . . . meant just that period and no more").

Rather than rewarding the Government's waiting until days before the statute lapses to file an information, the Court should hold prosecutors accountable in accordance with Congressional intent. *See Toussie v. United States*, 397 U.S. 112, 114–15 (1970) (observing that limitation periods are "designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity"); *see also U.S. v. Marion*, 404 U.S. 307, 322 (1971) (noting that "the applicable statute of limitations is the primary guarantee against bringing overly stale criminal charges. Such statutes represent legislative

assessments of relative interests of the State and the defendant in administering and receiving justice . . .").

C. The rule of lenity further prohibits equitable tolling in this case.

Lastly, this Court must not forget that "criminal statutes are to be liberally interpreted in favor of repose." *Midgley*, 142 F.3d at 180 (citing *Toussie*, 397 U.S. at 114). The rule of lenity drives the final nail in the coffin for the Government's argument: "the very existence of a statute of limitations entails the prospect that wrongdoers will benefit." *Id.* Even if the Court were to find that the Government's ten-year wait to prosecute Ms. Maximoff satisfied the diligent prosecution element under *Waldburger*, "the clear and unambiguous rule afforded by the criminal statute of limitations is preferable to a shifting standard based on the perceived equity of the defendant's conduct." *Id.*

And since Congress is presumed to legislate with knowledge of canons like the rule of lenity, the statute's unqualified nature shows that Congress has considered and balanced the social costs of strict adherence to the statute. *See id*; *see also Lozano*, 572 U.S. at 18 ("We do not apply equitable tolling as a matter of some independent authority to reconsider the fairness of legislative judgments balancing the need for relief and repose."). Tolling the statute against Ms. Maximoff when the Government squandered the ten years given it by Congress to pursue immigration offenses would be a tragic miscarriage of justice.

In sum, the Government failed to timely file its indictment against Ms. Maximoff and is not entitled to equitable tolling to salvage its prosecutorial mistakes. The Court should respect the Congressional priority given to defendants' rights inherent in the plain language of Rule 7(b) and in the applicable statute of limitations found in 18 U.S.C. § 3298.

CONCLUSION

Two days. The Government delayed and waited until two days before the statute of limitations was up. And when it finally acted, it did so in abrogation of Ms. Maximoff's rights. This Court should not reward the Government's procrastination by disenfranchising Ms. Maximoff. For the foregoing reasons, this Court should dismiss the Indictment of Ms. Maximoff.

Respectfully Submitted,

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