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.

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

/s/ 119
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INTRODUCTION AND REQUEST FOR RELIEF

From World War II to natural disasters, no mass suspensions of the grand jury have plagued our legal system. That changed in 2020. The COVID-19 pandemic led to the suspension of grand juries across the country. Some districts, like Stetson, suspended grand juries for more than a year. These unprecedented suspensions halted the legal system. No issue signifies that halt like the inability to bring indictments against criminal defendants before the statutes of limitation expired. Such is the issue in the present case. Without grand juries, the State was powerless to bring indictments against criminal defendants. The defendant, Wanda Maximoff, stands accused of conspiracy to encourage and induce aliens to continue residing in the United States in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv), (v). The Defendant alleges that the Court must dismiss the indictment because the Government returned it in violation of the statute of limitations.

The Defendant further argues that the initial information filed by the Government was invalid due to the lack of Rule 7(b) waiver from Defendant and, therefore, the later indictment was not within the extended statute of limitations.

The Government argues first that the initial information on July 22, 2020 is valid because Rule 7(b) waivers do not affect the filing of an information; and second, alternatively, the doctrine of equitable tolling should apply to the present case because of the extraordinary circumstances of the suspended grand jury and the COVID-19 pandemic.

STATEMENT OF FACTS

In 2018, an arrestee in Stetson admitted to federal law enforcement officers that he purchased a forged Order of Supervision ("OSUP") from a woman named "Scarlet." Woo

Decl. at 2. The Government issues OSUPs to aliens who cannot return to their home-country due to qualifying conditions. Woo Decl. at 2. An OSUP authorizes the release of to the community and affords benefits like the ability to receive a state driver's license and an employment authorization card. Woo Decl. at 2. A witness named "Scarlet" in connection with selling forged OSUPs to at least eight undocumented immigrants within a three-year span. Woo Decl. at 6–7. The government identified Wanda Maximoff as "Scarlet" through information gained during interviews with aliens, as well as Maximoff's bank records, phone records, and flight records. Woo Decl. at 6. Between 2007 and 2010, Maximoff would allegedly charge $10,000 or more to provide forged OSUP documents. Woo Decl. at 4, 6.

Less than two years after the Government's investigation of Maximoff began, the COVID-19 pandemic halted much of the United States. Like the rest of the country, the pandemic also halted the courts. On March 23, 2020, the State of Stetson suspended all grand jury proceedings in light of the COVID-19 pandemic. Transcript of Initial Appearance at 3, ¶ 62. This left the Government with four months before the statute of limitations expired in Maximoff's case, and no grand jury to find an indictment. The Government was left with a choice: to either wait for grand juries to resume and risk the statute of limitations expiring, or find an alternative means to bring its claim within the statute of limitations.

On July 22, 2020, the Government chose to file an information with the clerk of the Court. Order of Dismissal at 1. The government voluntarily dismissed the information the next day, and Judge Elijah Bradley signed an order of dismissal. Order of Dismissal at 1.

After more than a year of no grand jury proceedings, on March 29, 2021, the Court allowed grand juries to reconvene. Transcript of Initial Appearance at 3, ¶ 63. A few months later, a grand jury returned an indictment charging Maximoff with crimes under 8 U.S.C. § 1324(a)(1)(A)(iv) and (v). *See* Indictment at 3.

ARGUMENT

I. The Government timely returned the Information and Indictment.

The sole charge in the Indictment is that Maximoff violated 8 U.S.C. § 1324(a)(1)(A)(iv) and (v) (previously codified as section 274(a) of the Immigration and Nationality Act). *See* Indictment at 3.

Thus, the governing statute of limitations for the information and indictment in Maximoff's case is 18 U.S.C. § 3298.

The language of section 3298 provides:

> No person shall be prosecuted, tried, or punished for any non-capital offense or conspiracy to commit a non-capital offense under section… 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). Here, Maximoff's offenses allegedly occurred between May 31, 2007, and July 24, 2010. Indictment at 2. Thus, the applicable statute of limitations expired on July 24, 2020. The Government filed the information within the statute of limitations, on July 22, 2020. The Government timely instituted the information within the statute of limitations, and the information was effective to comply with the statute of limitations even without a Rule 7(b) waiver.

A. The Information was instituted within the statute of limitations period.

Because an information is instituted when the Government files the information with the clerk, the information was instituted within the statute of limitations. *See United States v. Burdix-Dana*, 149 F.3d 741, 743 (7th Cir. 1998) (the filing of the information is sufficient to institute it within the meaning of 18 U.S.C. § 3282).

Courts' interpretations of the more general statute of limitations for non-capital offenses, 18 U.S.C. § 3282, are informative for how section 3298 should be interpreted. There is no material difference in the language proscribing the timing of the information or indictment:

> Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is *instituted* within five years next after such offense shall have been committed.

18 U.S.C. § 3282 (West) (emphasis added). A majority of federal district courts interpret "instituted" in this statute of limitations to mean when an information is filed with the clerk of the court. *See e.g.*, *Burdix-Dana*, 149 F.3d at 742; *United States v. Rosecan*, No. 20-CR-80052, 2021 WL 1026070 at *4 (S.D. Fla. Mar. 17, 2021); *United States v. Holmes*, No. 18-cr-00258, 2020 WL 6047232, at *8 (N.D. Cal. Oct. 13, 2020); *United States v. Briscoe*, No. CR RDB-20-0139, 2020 WL 5076053, at *2 (D. Md. Aug. 26, 2020); *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).

This interpretation adheres to the plain language of the statute, as it must. *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."). Where the language of the statute is unambiguous, the court's inquiry ends. *United States v. St. Amour*, 886 F.3d 1009, 1013 (11th Cir. 2018) (having concluded that the "language at issue has a plain and unambiguous meaning," "we need go no further").

Section 3298 does not suggest that a *prosecution* must be instituted before the expiration of the limitations period; rather, the plain language of Section 3298 requires that the *information* be "instituted" within ten years to satisfy the statute of limitations. 18 U.S.C. § 3298. The terms "instituted" and "prosecuted" are not equivalent. *Rosecan*, 2021 WL 1026070 at *3. An information is instituted when it is properly filed, regardless of whether the defendant waived prosecution by indictment. *Briscoe*, 2020 WL 5076053, at *2.

B. An information tolls the statute of limitations with or without a Rule 7(b) waiver.

The law does not require a waiver for an information to be filed with the clerk of the court. *Holmes*, 2020 WL 6047232, at *8–9 ("[T]he filing of an information without an accompanying waiver is sufficient to toll the statute of limitations….a waiver may be obtained under Rule 7(b), but one is not required for an information to come into being."). For a defendant to be *prosecuted* by information, the law requires a waiver of a defendants' right to indictment. *See* Fed. R. Crim. P. 7(b) ("An offense….may be *prosecuted* by information if the defendant….waives prosecution by indictment.") (emphasis added).

Without a waiver of indictment, the filing of an information does not empower the Government to "prosecute" the defendant, bring the defendant to trial, or have the defendant accept a guilty plea. *See Briscoe*, 2020 WL 5076053, at *2 (noting that "[f]urther prosecutorial actions—such as a trial or a plea agreement—would require waiver, as Rule 7(b) sets forth."). However, an information does not have to be effective for all prosecutorial actions in order for it to toll the statute of limitations. *Holmes*, 2020 WL 6047232, at *8–9.

The majority of courts are in agreement that an information filed within the statute of limitations is valid regardless of whether the defendant waived his right to indictment under Rule 7(b). *See Marifat*, 2018 WL 1806690 at *1-2; *Stewart*, 425 F. Supp. 2d at 729; *Hsin-Yung*, 97 F. Supp. 2d at 28; *Watson*, 941 F. Supp. at 603.

While the absence of a valid waiver of prosecution by indictment bars the acceptance of a guilty plea or a trial on the relevant charges, waivers have no effect on the validity of the filing of an information. *See Stewart*, 425 F. Supp. 2d at 742. Rule 7(b) does not forbid filing an information without a waiver. Rather, it establishes that a prosecution may not *proceed* without a valid waiver. *Id* (citing *United States v. Cooper*, 956 F.2d 960, 962 (10th Cir.1992)). Rule 7(b) concerns itself with the requirements that the government must satisfy before it proceeds with a prosecution, not the statute governing the limitations period. *Id.* at 742–43.

C. Filing an information does not constitute a "prosecution."

A minority of courts have defined "prosecution" to include "institution" of an information. *See United States v. Machado*, No. CRIM.A.04-10232-RWZ, 2005 WL

2886213, at *1 (D. Mass. Nov. 3, 2005). The court in *Machado* held that because an information and an indictment serve a similar purpose of commencing a criminal action, they are functionally equivalent. *Id.* at *2. So, the court held that an information must be accompanied by a valid waiver. *Id.* The court in *Machado* came to this conclusion by heavily emphasizing policy concerns and at the expense of the plain language of the statute. The court even acknowledged that the majority of courts "have reached the opposite conclusion." *Id.* at *3.

The *Machado* interpretation effectively rewrites the statute, encroaching on the duties of Congress and overstepping its boundaries as part of the judiciary. Section 3298 clearly delineates "prosecution" and "institution," and this Court should not ignore that distinction. Other courts share the policy concerns articulated in *Machado*, namely that the government could potentially misuse a waiverless information as a placeholder to indefinitely toll the statute of limitations. *See Rosecan*, 2021 WL 1026070 at *3. However, policy considerations, though valid they may be, do not trump the plain language of the statute. *See id.*

The Court should adhere to the plain language of the statute and the policy concerns are properly addressed by Congress, not the courts. *Id.* ("[A]dressing such policy implications is a task for Congress, not the courts."). Courts have no license to disregard clear language on an intuition that Congress intended something broader. *Cyan Inc. v. Beaver County Employees Retirement Fund*, 138 S.Ct. 1061, 1078 (2018). Interpreting the statute to give separate meaning to "prosecution" and the "institution of an information"

comports with the plain language of the statute and is consistent with the majority of courts' holdings on this issue. *Briscoe*, 2020 WL 5076053 at *2.

D. COVID-19 made it impossible for an indictment to be returned within the statute of limitations.

The Prosecution could not initiate an indictment without a grand jury. Although some courts are concerned that the majority interpretation could allow the Government to deliberately toll the statute of limitations, the Government clearly did not have control over the delay in this case. The concern with Government bad faith is properly addressed by Congress, not the courts. This case, furthermore, does not implicate that concern. The Government was forced to file the information due to the delay in grand jury proceedings in response to the COVID-19 pandemic.

The Government filed the information on July 22, 2020 and dismissed the information the next day. *See* Order of Dismissal at 1. The Government did not use the information as a placeholder to toll the limitations period. Rather, the Government immediately dismissed the information, subjecting it to Section 3288 and making its intentions known that it would return an indictment when the grand jury proceedings resumed. The Government could not have returned an indictment while the grand jury proceedings were suspended. Rather than use the information as a placeholder to toll the limitations period, the Government dismissed the information and moved forward with an indictment after grand jury proceedings resumed in 2021.

The Government's information was far from a deliberate ploy to cause delay in the prosecution of this case—in fact, quite the opposite. The Government filed the information

within the statute of limitations period and complied with 18 U.S.C. § 3288 by dismissing the information and timely filing an indictment when the grand jury could convene again.

Similar to the present case, in *Briscoe*, COVID-19 standing orders pausing grand jury proceedings led the government to file an information to comply with the statute of limitations. In *Briscoe*, a homicide occurred in May 2015, and the Government filed a criminal information in May 2020, two days before the statute of limitations period expired. *Briscoe*, 2020 WL 5076053 at *2. When the Government filed the information in *Briscoe*, an indictment could not be obtained because of the grand jury suspensions. *Id.* The defendant in *Briscoe* never waived prosecution by indictment. *Id.* Once grand jury proceedings resumed, but after the statute of limitations period had expired, the Government returned an indictment. *Id.*

The *Briscoe* court found that the delay did not violate the defendant's due process rights because it did not cause "substantial prejudice" to the defendant's right to a fair trial and the delay was not an "intentional device" designed to give the government a "tactical advantage." *Briscoe*, 2020 WL 5076053 at *2 (quoting *United States v. Marion*, 404 U.S. 307, 324 (1971)). The court explained, "the delay in this matter is attributable to the COVID-19 pandemic, not to any deliberate tactical maneuvering." *Id.*

As in *Briscoe*, the COVID-19 pandemic was the driving force of any delay in this case—the Government was not attempting to indefinitely toll the statute of limitations.

E. The Indictment was timely returned pursuant to 18 U.S.C. § 3288.

Whenever a judge dismisses an information after the applicable statute of limitations has expired and regular grand jury proceedings have not been in session, a new indictment

may be returned within six months of when the next regular grand jury is convened. 18 U.S.C. § 3288.

Here, grand jury proceedings were not in session between March 23, 2020 and March 29, 2021, due to the COVID-19 pandemic. Transcript of Initial Appearance at 3. The grand jury returned the Defendant's indictment on September 21, 2021, within six months of the resumption of regular grand jury proceedings. Indictment at 3. Thus, the Government complied with Section 3288 and the indictment was timely.

II. The Government is entitled to equitable tolling of the criminal statute of limitations.

Even if the Court finds the July Information was null and void, the Defendant's indictment is still valid under the doctrine of equitable tolling. This doctrine allows the Court to toll a statute of limitations when extraordinary circumstances prevented a party from bringing a claim. *Holland v. Florida*, 560 U.S. 631 (2010).

A. Allowing equitable tolling of the statute of limitation adheres to the statutory intent of 18 U.S.C. §§ 3288, 3298.

Like much of statutory analysis, the key consideration is statutory intent. *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014) ("Because the doctrine effectively extends an otherwise discrete limitations period set by Congress, whether equitable tolling is available is fundamentally a question of statutory intent."). The statute of limitations language in the present case is that no case shall be brought under 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.

Supreme Court precedent establishes a clear presumption in favor of equitable tolling. *Bowen v. City of New York*, 476 U.S. 467, 480 (1986). Congress legislates with the knowledge of the presumption of equitable tolling of statutes of limitations. *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96 (1990). In statutes where the legislature has not precluded equitable tolling, it intended for equitable tolling consistent with governing precedent. *See Smith v. Davis*, 953 F.3d 582 (9th Cir. 2020), cert. denied. Courts read the doctrine of equitable tolling into every federal statute of limitations unless it is inconsistent with the statute itself. *Id*. at 480 (holding that the court "must determine . . .whether equitable tolling is consistent with Congress' intent in enacting' the statutory scheme.").

To determine whether the language indicates statutory intent, the Court should "examine the purposes and policies underlying the limitation provision, the Act itself, and the remedial scheme developed for [its] enforcement." *Burnett v. New York Central R.R. Co.*, 380 U.S. 424, 427 (1965). Supreme Court precedent indicates a clear presumption in favor of equitable tolling, but it also created factors to indicate when an interpretation rebuts said presumption. *See U.S. v. Brockamp*, 519 U.S. 347, 348 (1997).

1. The *Brockamp* factors do not apply to 18 U.S.C. § 3298.

The Supreme Court in *U.S. v. Brockamp* provided five factors to determine if equitable tolling is inconsistent with the Congressional intent: the detail of the statute, its use of technical language, reiterations of the limitations period, the explicit inclusion of exceptions, and the statute's underlying subject matter. *Id*. In the present case, the statute at hand does not trigger these factors. The language of the statute itself is fairly sparse, stating what offenses apply and the limitation itself. 18 U.S.C. § 3298. The statute does not

use technical language that meets the standard of *Brockamp*. *Id*. (in which the technical language in question was the Internal Revenue Code). The statute only mentions the limitations period once and contains no explicit inclusion of exceptions. 18 U.S.C. § 3298.

When considering the final factor, the formidable nature of felony trafficking offenses warrants application of equitable tolling. *Id*. In *Holland v. Florida*, the Supreme Court allowed equitable tolling to apply to the statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996, a criminal statute. 28 U.S.C. § 2244(d). *Holland*, 560 U.S. at 631. The Court warned against a reading of the statute that would "close courthouse doors that a strong equitable claim would ordinarily keep open." *Holland*, 560 U.S. 631 at 649. Although 28 U.S.C. § 2244(d) provides a one-year statute of limitations "shall apply," the Supreme Court determined that the presumption of equitable tolling was not inconsistent despite this seemingly final language. *Id*. The statute, furthermore, contained explicit exceptions to the statute of limitations. *Holland*, 560 U.S. at 647. The Supreme Court determined that the gravity of the subject matter outweighed the negative impact of one of the *Brockamp* factors. *Id*.

The Supreme Court's reasoning in *Holland* is instructive for how this Court may treat 18 U.S.C. § 3298. Although 18 U.S.C. § 3298 contains distinct language stating the limitations period, it does not rise to the level of the *Brockamp* factors. But even if one of the factors applied, *Holland* demonstrated the flexibility of said factors. The language of 18 U.S.C. § 3298 does not contradict the presumption of equitable tolling. Because of this lack of contradiction, the Court should presume that equitable tolling may apply to 18 U.S.C. § 3298. *See Bowen* 476 U.S. at 480; *Smith* 953 F.3d 582. The next step, therefore,

is to determine if the circumstances surrounding the present case—a global pandemic and a closed grand jury—warrant the application of equitable tolling.

B. The circumstances in the present case warrant the application of equitable tolling.

The Court considers two key elements when determining whether equitable tolling applies: whether the party seeking equitable tolling pursued its rights diligently and whether extraordinary circumstances prevented the party from bringing its claim. *Holland*, 560 U.S. at 631; *Blue v. Medeiros*, 913 F.3d 1, 9 (1st Cir. 2019) ("The diligence prong covers those affairs within the petitioner's control, while the extraordinary-circumstances prong covers matters outside his control.").

1. The Government pursued its rights diligently in its attempts to charge the defendant.

Courts are not inclined to provide an equitable remedy to parties who do not attempt to navigate their roadblocks, no matter how extraordinary. Whether equitable tolling applies, therefore, depends on whether the party seeking tolling diligently pursued their rights. *Holland* 560 U.S. at 631. The Supreme Court found that the diligence necessary was reasonable diligence, not the maximum feasible diligence. *Id*. at 653. The party seeking equitable tolling must act with due diligence. *See, e.g.*. *Elmore v. Henderson,* 227 F.3d 1009, 1013 (7th Cir. 2000) ("[the plaintiff] could not possibly invoke the doctrine of equitable tolling unless he sued just as soon as possible after the judge's action made him realize that the statute of limitations had run."). The Ninth Circuit held that when determining whether a party acted with due diligence, the Court must "consider the

petitioner's overall level of care and caution in light of his or her particular circumstances." *Doe v. Busby*, 661 F.3d 1001, 1013 (9th Cir. 2011).

The Government faced unprecedented roadblocks to bringing this claim, yet still diligently pursued its rights. The Government attempted to bring forward the case against the Defendant before the statute of limitations ran, but due to the suspension of the grand jury on March 23, 2020, no indictment could be found by the limit of the 10-year deadline. The Government, therefore, sought the alternative solution of filing Information before the deadline. The Government in the present case did not delay, but instead acted with due diligence to meet the statute of limitations.

2. The COVID-19 pandemic meets the standard of an extraordinary circumstance.

The COVID-19 pandemic and its global effect was—and still is—undoubtedly extraordinary. *Brown v. Davis,* 482 F. Supp. 3d 1049 (E.D. Cal. 2020). The Court, however, must consider how these circumstances stemming from the pandemic impacted the government's ability to bring its claim. *Holland,* 560 U.S. at 631. Courts only apply equitable tolling "where the circumstances that caused a litigant's delay are both extraordinary and beyond its control." *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 257 (2016). Some circuits require a sufficient nexus between the extraordinary circumstances and the failure to meet the statute of limitations. *See Jenkins v. Greene,* 630 F.3d 298, 302 (2d Cir. 2010), *Ross v. Varano*, 712 F.3d 784, 803 (3d Cir. 2013), *Bills v. Clark,* 628 F.3d 1092, 1097–98 (9th Cir. 2010), *Del Rantz v. Hartley*, 577 F. App'x 805, 811 (10th Cir. 2014). Application of this standard is flexible and based on

case-by-case analysis. *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964); *Dillon v. Conway*, 642 F.3d 358, 362 (2d Cir. 2011).

When considering this flexibility, Courts also apply the totality of the circumstances to determine each tolling claim on a case-by-case basis. *Ross*, 712 F. 3d 784 at 803; *Jones v. US*, 689 F.3d 621, 627 (6th Cir. 2012); *Socha v. Boughton*, 763 F.3d 674, 686 (7th Cir. 2014). Based on this totality of the circumstances approach, even if individual factors alone are insufficient to meet the extraordinary circumstances standard, they can in the aggregate. *Jones*, 689 F.3d at 627.

While a global pandemic with national shutdowns is unprecedented in U.S. history, courts may consider other circumstances that have been deemed extraordinary. *See, e.g.*, *Diaz v. Kelly*, 515 F.3d 149 (2d Cir. 2008) (holding that prolonged delay of notice of rulings to a prisoner is an extraordinary circumstance); *Socha*, 763 F.3d at 686 (holding that lack of access to legal documents for 90% of the year warranted equitable tolling); *Hanger v. Abbott*, 73 U.S. 532 (1867) (when state courts were closed due to the Civil War). In these cases, government action affecting a party and beyond its control qualified as an extraordinary circumstance. The suspension of the grand jury was a government action beyond the control of the prosecutors. It is not within the function of the Prosecution to summon the grand jury, and it did not have the power to overrule the Order. The suspension of the grand jury for over a year alone arises to the level of an extraordinary circumstance, but the Court should look at the totality of the circumstances. *Jones*, 689 F.3d at 627.

When considering the totality of the circumstances, it is impossible to ignore the COVID-19 pandemic. The global pandemic triggered working from home, social

distancing, and other unprecedented changes to daily life in the United States. Many districts have determined that the circumstances of the COVID-19 pandemic alone arise to the level of extraordinary. *See Brown*, at 1049; *Dunn v. Baca*, No. 319CV00702MMDWGC, 2020 WL 2525772, at *2 (D. Nev. 2020)*; Cowan v. Davis*, No. 1:19-cv-00745-DAD, 2020 WL 4698968, at *2 (E.D. Cal. 2020), *Pickens v. Shoop*, No. 1:19-cv-558, 2020 WL 3128536, at *3 (S.D. Ohio 2020), *Dale v. Williams*, 320CV00031MMDCLB, 2020 WL 4904624 (D. Nev. 2020), appeal dismissed, 20-16839, 2020 WL 8922186 (9th Cir. 2020)).

The combination of the suspension of the grand jury and the COVID-19 pandemic arises to the level of an extraordinary circumstance. There is a clear nexus between these circumstances and the Prosecution's failure to meet the deadline. The extraordinary circumstances that have plagued the court systems for the last year are a quintessential example of why equitable tolling is necessary.

CONCLUSION

The COVID-19 pandemic seemingly brought the whole world to a halt. As people adjust back to a changed lifestyle, there must be remedies for the consequences of that halt. The Prosecution consistently put in an effort to bring this claim and did so properly. Not only did it follow the proper procedure, but it did so diligently during extraordinary circumstances. This claim was timely brought, and even if the Court finds it was not, the doctrine of equitable tolling should apply. For the foregoing reasons, the Defendant's Motion to Dismiss should be denied.

Respectfully Submitted,

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