

1 NICOLA T. HANNA
United States Attorney
2 BRANDON D. FOX
Assistant United States Attorney
3 Chief, Criminal Division
KERRY L. QUINN (Cal. Bar No. 302954)
4 Assistant United States Attorney
Major Frauds Section
5 312 North Spring Street, 11th Floor
Los Angeles, California 90012
6 Telephone: (213) 894-5423
Facsimile: (213) 894-6269
7 E-mail: Kerry.L.Quinn@usdoj.gov

8 Attorneys for Plaintiff
UNITED STATES OF AMERICA
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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ANDREW MARNELL,

16 Defendant.
17

No. 2:20-CR-319-RGK

STIPULATION REGARDING REQUEST FOR
(1) CONTINUANCE OF TRIAL DATE AND
(2) FINDINGS OF EXCLUDABLE TIME
PERIODS PURSUANT TO SPEEDY TRIAL
ACT

CURRENT TRIAL DATE: 09/29/2020
PROPOSED TRIAL DATE: 05/11/2021

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19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Kerry L. Quinn, and
22 defendant ANDREW MARNELL ("defendant"), both individually and by and
23 through his counsel of record, Deputy Federal Public Defender Adithya
24 Mani, hereby stipulate as follows:

25 1. The Indictment in this case was filed on July 28, 2020.
26 Defendant first appeared before a judicial officer of the court in
27 which the charges in this case were pending on July 16, 2020. The
28

1 Speedy Trial Act, 18 U.S.C. § 3161, originally required that the
2 trial commence on or before October 6, 2020.

3 2. On August 6, 2020, the Court set a trial date of September
4 29, 2020.

5 3. Defendant is detained pending trial. The parties estimate
6 that the trial in this matter will last approximately three to four
7 days.

8 4. By this stipulation, defendant moves to continue the trial
9 date to May 11, 2021.

10 5. Defendant requests the continuance based upon the following
11 facts, which the parties believe demonstrate good cause to support
12 the appropriate findings under the Speedy Trial Act:

13 a. Defendant is charged with violations of 18 U.S.C.
14 § 1344(2) (bank fraud). The government has produced discovery to the
15 defense, including more than 6,000 pages of documents and additional
16 digital files. The discovery in the case includes, among other
17 documents and records: agent reports, bank records, criminal history
18 reports, search warrant documents, and documents and records from the
19 Small Business Administration (SBA), the Treasury Inspector General
20 for Tax Administration (TIGTA), credit rating agencies, casinos,
21 state taxing authorities, secretaries of state, and internet service
22 providers (ISPs). The government will produce additional discovery
23 as necessary in accordance with its discovery obligations. Among
24 other documents and records that the government anticipates producing
25 are copies of approximately 20 digital devices that were seized from
26 defendant's residence on July 16, 2020, in connection with the
27 execution of a search warrant at the residence that day. The data
28 from the digital devices is voluminous (agents currently estimate

1 that the total volume of data on these devices will exceed 1 TB and
2 likely will exceed 2 TBs), and is still in the process of being
3 copied or "imaged." Some of the data is password protected, which
4 has slowed the imaging process, and the number and variety of devices
5 that were seized, and the different types of data on those devices,
6 has also complicated the imaging process. Two of the devices appear
7 to belong to third party companies, and confidentiality concerns
8 raised by those companies may require separate protective orders to
9 govern data obtained from those devices. The government also intends
10 to use a filter team to review data from at least some of the
11 devices, which will require additional time to complete production of
12 discovery to defense. The discovery in this case also includes a
13 large amount of personal and confidential information and sensitive
14 business information of third parties. The redaction of all
15 confidential information in the discovery would be prohibitively time
16 consuming and might prevent defense counsel from obtaining a
17 realistic view of these materials. To address this issue, on August
18 6, 2020, the parties entered into a stipulation to govern discovery
19 in this matter, agreeing to restrict the use and dissemination of
20 confidential information, and requesting entry of a protective order.
21 On August 7, 2020, the Court entered the requested protective order
22 (docket no. 25). As a result of restrictions in the protective
23 order, including restrictions on defendant's access to confidential
24 information, defense counsel has needed to review discovery with
25 defendant personally, increasing the amount of time necessary to
26 conduct an independent investigation of the case. Defense counsel is
27 also assessing the potential need for an expert to assist the defense
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1 in this case, and defense counsel needs additional time to complete
2 this assessment and locate a suitable expert if one is needed.

3 6. Defense counsel has other active matters preventing full
4 preparation of this matter on the current schedule, including the
5 following:

6 a. United States v. Gallardo, 2:20-CR-141-DSF, a
7 possession with intent to distribute drugs and possession of firearm
8 case, scheduled for trial on October 6, 2020, and estimated to last
9 2-3 days.

10 b. United States v. Gray, 2:19-CR-772-CJC, a possession
11 with intent to distribute drugs case, scheduled for trial on October
12 6, 2020, and estimated to last 3 days.

13 c. United States v. Jimenez-Contreras, 5:19-CR-345-CAS, a
14 drug distribution case, scheduled for trial on December 1, 2020, and
15 estimated to last 3 days.

16 d. United States v. Arzate, 2:18-CR-898-DMG, a possession
17 of firearm case, scheduled for trial on January 19, 2021, and
18 estimated to last 2-3 days.

19 e. United States v. Ramos, 2:17-CR-701-GW, a felon-in-
20 possession and stolen mail case, scheduled for trial on February 23,
21 2021, and estimated to last 2-4 days.

22 f. United States v. Garcia-Moreno, 2:20-CR-230-SVW, a
23 multi-defendant drug distribution conspiracy case, scheduled for
24 February 23, 2021, and estimated to last 3 days.

25 g. United States v. Perez, 8:18-CR-86-CJC, a felon-in-
26 possession case, scheduled for trial on August 17, 2021, and
27 estimated to last 2-3 days.

1 7. The government also submits that the following facts
2 support a continuance of the trial date and findings regarding
3 excludable time pursuant to 18 U.S.C. § 3161(h)(7)(A):

4 a. As both the California governor and Los Angeles mayor
5 have recognized, California is in the midst of a grave public-health
6 emergency requiring people to take extreme measures to limit contact
7 with one another. On March 4, 2020, as part of the state's response
8 to the global COVID-19 outbreak, Governor Gavin Newsom declared a
9 State of Emergency in California. On March 19, 2020, Governor Newsom
10 declared a statewide lockdown to address the rapid spread of COVID-19
11 throughout the state. Official public health guidance continues to
12 evolve on a near daily basis.

13 b. On March 13, 2020, the Central District of California
14 entered a General Order suspending jury selection and jury trials
15 scheduled to begin before April 13, 2020. C.D. Cal. General Order No.
16 20-02, In Re: Coronavirus Public Emergency, Order Concerning Jury
17 Trials and Other Proceedings (March 13, 2020). The same day, the
18 Court entered another General Order imposing health- and travel-
19 related limitations on access to Court facilities. C.D. Cal. General
20 Order No. 20-03, In Re: Coronavirus Public Emergency, Order
21 Concerning Access to Court Facilities (March 13, 2020). On March 19,
22 2020, by Order of the Chief Judge, the Court instituted its
23 Continuity of Operations Plan ("COOP"), closing all C.D. Cal.
24 courthouses to the public (except for hearings on criminal duty
25 matters) and taking other emergency actions through May 1, 2020. C.D.
26 Cal. Order of the Chief Judge No. 20-042 (March 19, 2020), as
27 extended on June 26, 2020.

1 c. On March 29, 2020, by Order of the Chief Judge, the
2 Court found "that emergency conditions due to the COVID-19 virus
3 outbreak will materially affect the functioning of the courts within
4 the Central District of California." C.D. Cal. Order of the Chief
5 Judge No. 20-043 (March 29, 2020).

6 d. On April 13, 2020, the Court extended the COOP through
7 June 1, 2020. C.D. Cal. General Order 20-05 (April 13, 2020).

8 e. On May 28, 2020, the Court extended the activation of
9 the COOP Plan and adopted a three-phase re-opening plan. C.D. Cal.
10 General Order 20-08, In Re: Coronavirus Public Emergency, Order
11 Concerning Phased Reopening of the Court (May 28, 2020). On August
12 3, 2020, the Court further extended the activation of the COOP Plan,
13 and reaffirmed the three-phase opening plan. C.D. Cal. General Order
14 20-09, In Re: Coronavirus Public Emergency, Order Concerning Phased
15 Reopening of the Court, at 2 (August 3, 2020). Phase 1, which had
16 been completed as of August 3, 2020, contemplated the return of
17 certain staff to the courthouses to prepare for limited in-court
18 hearings. Phase 2, which began on June 22, 2020, contemplated
19 reopening courthouses for limited in-court hearings. The last phase
20 (Phase 3) contemplates the resumption of jury trials, but the date
21 for the transition to this last phase has not been determined. As a
22 result, no Judge in this District will be able to hold any criminal
23 trials until the Court enters Phase 3 of the reopening plan. As of
24 the date of the filing of this stipulation, the Court has yet to set
25 a date for the resumption of jury trials.

26 8. In light of the foregoing, defense counsel represents that
27 additional time is necessary to confer with defendant, conduct and
28 complete an independent investigation of the case, assess the need

1 for and, if necessary, retain an expert to assist the defense in this
2 case, conduct and complete additional legal research including for
3 potential pre-trial motions, review the discovery and potential
4 evidence in the case, and prepare for trial in the event that a
5 pretrial resolution does not occur. Defense counsel represents that
6 failure to grant the continuance would deny him reasonable time
7 necessary for effective preparation, taking into account the exercise
8 of due diligence.

9 9. Defendant believes that failure to grant the continuance
10 will deny him continuity of counsel and adequate representation.

11 10. The government does not object to the continuance.

12 11. The requested continuance is not based on congestion of the
13 Court's calendar, lack of diligent preparation on the part of the
14 attorney for the government or the defense, or failure on the part of
15 the attorney for the Government to obtain available witnesses.

16 12. For purposes of computing the date under the Speedy Trial
17 Act by which defendant's trial must commence, the parties agree that
18 the time period of September 29, 2020 to May 11, 2021, inclusive,
19 should be excluded pursuant to 18 U.S.C. §§ 3161(h)(7)(A),
20 (h)(7)(B)(i), and (h)(7)(B)(iv), because the delay results from a
21 continuance granted by the Court at defendant's request, without
22 government objection, on the basis of the Court's finding that:
23 (i) the ends of justice served by the continuance outweigh the best
24 interest of the public and defendant in a speedy trial; (ii) failure
25 to grant the continuance would be likely to make a continuation of
26 the proceeding impossible, or result in a miscarriage of justice; and
27 (iii) failure to grant the continuance would unreasonably deny
28 defendant continuity of counsel and would deny defense counsel the

1 reasonable time necessary for effective preparation, taking into
2 account the exercise of due diligence.

3 13. Nothing in this stipulation shall preclude a finding that
4 other provisions of the Speedy Trial Act dictate that additional time
5 periods be excluded from the period within which trial must commence.
6 Moreover, the same provisions and/or other provisions of the Speedy
7 Trial Act may in the future authorize the exclusion of additional
8 time periods from the period within which trial must commence.

9 IT IS SO STIPULATED.

10 Respectfully submitted,

11 Dated: September 15, 2020

NICOLA T. HANNA
United States Attorney

12 BRANDON D. FOX
13 Assistant United States Attorney
14 Chief, Criminal Division

15 /s/

16 KERRY L. QUINN
Assistant United States Attorney

17 Attorneys for Plaintiff
18 UNITED STATES OF AMERICA

19
20 Dated: September 15, 2020

/s/ by email permission

21 ADITHYA MANI
22 Deputy Federal Public Defender

23 Attorney for Defendant
24 ANDREW MARNELL
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1 I am ANDREW MARNELL's attorney. I have discussed this
2 stipulation and the continuance of the trial date with my client. I
3 have fully informed my client of his Speedy Trial rights. To my
4 knowledge, my client understands those rights and agrees to waive
5 them. I believe that my client's decision to give up the right to be
6 brought to trial earlier than May 11, 2021 is an informed and
7 voluntary one.

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ADITHYA MANI
Deputy Federal Public Defender
10 Attorney for Defendant
ANDREW MARNELL
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9/15/2020

Date