

1 TRACY L. WILKISON
Acting 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
9

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: 05/11/2021
PROPOSED TRIAL DATE: 08/24/2021

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19 Plaintiff United States of America, by and through its counsel
20 of record, the Acting United States Attorney for the Central District
21 of California and Assistant United States Attorney Kerry L. Quinn,
22 and defendant ANDREW MARNELL ("defendant"), both individually and by
23 and through his counsel of record, Deputy Federal Public Defender
24 Neha Christerna, 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. The Court has previously continued the trial date in this
5 case from September 29, 2020 to May 10, 2021, and found the interim
6 period to be excluded in computing the time within which the trial
7 must commence, pursuant to the Speedy Trial Act.

8 3. Defendant is detained pending trial. The parties estimate
9 that the trial in this matter will last approximately three to four
10 days.

11 4. By this stipulation, defendant moves to continue the trial
12 date to August 24, 2021.

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

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

1 defendant's residence on July 16, 2020, in connection with the
2 execution of a search warrant at the residence that day. The data
3 from the digital devices is voluminous (agents currently estimate
4 that the total volume of data on these devices exceeds 1 TB). Some
5 of the data is password protected, which has complicated the imaging
6 process, and the number and variety of devices that were seized, and
7 the different types of data on those devices, has also extended the
8 time necessary to process the data. The government is also using a
9 filter team to review data from at least some of the devices, which
10 requires additional time to complete production of discovery to
11 defense. The discovery in this case also includes a large amount of
12 personal and confidential information and sensitive business
13 information of third parties. The redaction of all confidential
14 information in the discovery would be prohibitively time consuming
15 and might prevent defense counsel from obtaining a realistic view of
16 these materials. To address this issue, on August 6, 2020, the
17 parties entered into a stipulation to govern discovery in this
18 matter, agreeing to restrict the use and dissemination of
19 confidential information, and requesting entry of a protective order.
20 On August 7, 2020, the Court entered the requested protective order
21 (docket no. 25). As a result of restrictions in the protective
22 order, including restrictions on defendant's access to confidential
23 information, defense counsel has needed to review discovery with
24 defendant personally, increasing the amount of time necessary to
25 conduct an independent investigation of the case.

26 6. Defense counsel has other active matters preventing full
27 preparation of this matter on the current schedule, including the
28 following:

1 a. United States v. Davon Tyrie DeBose, CR 20-441-SB, a
2 mail theft case, scheduled to begin trial on May 3, 2021, and
3 estimated to last 1-2 days.

4 b. United States v. Alexis Tapia, CR 20-595-SVW, a felon
5 in possession of a firearm case, scheduled to begin trial on May 4,
6 2021, and estimated to last 1-2 days.

7 c. United States v. Jesus Francisco Gutierrez, CR 140-GW,
8 a drug distribution case, scheduled to begin trial on May 4, 2021,
9 and estimated to last 3-5 days.

10 d. United States v. Marcus Allen Jeffries, CR 20-141-JAK,
11 a felon in possession of a firearm case, scheduled to begin trial on
12 May 11, 2021, and estimated to last 2-3 days.

13 e. United States v. Jeremyah C. James, CR 21-167-GW, a
14 conspiracy to defraud the United States and bank fraud case,
15 scheduled to begin trial on May 18, 2021, and estimated to last 3-5
16 days.

17 f. United States v. Henry Hayes, CR 19-370-PSG, a drug
18 distribution case, scheduled to begin trial on May 25, 2021, and
19 estimated to last 3-4 days.

20 g. United States v. Donald E. Jaramillo, CR 20-231-MCS, a
21 drug distribution case, scheduled to begin trial on June 15, 2021,
22 and estimated to last 3-4 days.

23 h. United States v. Giovanni Hernandez, CR 21-023-JWH, a
24 drug distribution case, scheduled to begin trial on June 21, 2021,
25 and estimated to last 3-4 days.

26 i. United States v. Semion Bando, CR 20-425-ODW, a bank
27 fraud case, scheduled to begin trial on June 29, 2021, and estimated
28 to last 3-4 days.

1 j. United States v. Arturo Teodoro Gonzalez, ED 20-230-
2 SB, a drug distribution case, scheduled to begin trial on July 13,
3 2021, and estimated to last 3-4 days.

4 k. United States v. Semaj Hall, CR 20-152-FMO, a
5 possession of a destructive device case, scheduled to begin trial on
6 August 10, 2021, and estimated to last 1-3 days.

7 l. United States v. Rosendo Arriaga Flores, CR 20-365-
8 FMO, a drug distribution case, scheduled to begin trial on September
9 14, 2021, and estimated to last 3-4 days.

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

13 a. On March 13, 2020, following the President's
14 declaration of a national emergency in response to COVID-19, the
15 Court entered a General Order suspending jury selection and jury
16 trials. C.D. Cal. General Order No. 20-02 (Mar. 13, 2020).

17 b. The suspension of jury trials was one of the many
18 health and safety restrictions adopted in response to COVID-19.
19 During the pandemic, the Court has imposed limitations on access to
20 Court facilities, suspended grand jury proceedings, and maximized the
21 use of video-conference and telephonic hearings. See, e.g., C.D.
22 Cal. General Order No. 20-03 (Mar. 13, 2020); C.D. Cal. Order of the
23 Chief Judge No. 20-042 (Mar. 19, 2020); C.D. Cal. Order of the Chief
24 Judge No. 20-043 (Mar. 29, 2020); C.D. Cal. Order of the Chief Judge
25 No. 20-044 (Mar. 31, 2020); C.D. Cal. General Order No. 20-08 (May
26 28, 2020); C.D. Cal. General Order No. 20-09 (Aug. 6, 2020); C.D.
27 Cal. Order of the Chief Judge No. 20-179 (Dec. 7, 2020); C.D. Cal.
28 Order of the Chief Judge No. 21-002 (Jan. 6, 2021); C.D. Cal. Order

1 of the Chief Judge No. 21-031 (Mar. 16, 2021); C.D. Cal. General
2 Order No. 21-03 (Mar. 19, 2021).

3 c. The Court's orders were based on the California
4 Governor's declaration of a public-health emergency in response to
5 COVID-19 and the Centers for Disease Control's guidance to reduce
6 exposure to the virus and slow its spread. See, e.g., General Order
7 20-02, at 1; Chief Judge Order 20-042, at 1-2; General Order 20-09,
8 at 1. Local conditions necessitated an especially robust response.
9 California has reported over 3.5 million COVID-19 cases and
10 approximately 60,000 deaths. See [https://covid19.ca.gov/state-](https://covid19.ca.gov/state-dashboard/)
11 [dashboard/](https://covid19.ca.gov/state-dashboard/). The Central District of California has been one of the
12 hardest hit areas in the nation, with over 2 million reported cases
13 and approximately 40,000 deaths. See [https://www.nytimes.com/](https://www.nytimes.com/interactive/2021/us/california-covid-cases.html)
14 [interactive/2021/us/california-covid-cases.html](https://www.nytimes.com/interactive/2021/us/california-covid-cases.html). State and local
15 orders at various times during the pandemic have required residents
16 to stay home, prohibited travel, closed businesses, and suspended in-
17 person schooling. See, e.g., California Executive Order N-33-20
18 (Mar. 19, 2020); Safer at Home, Public Order Under City of Los
19 Angeles Emergency Authority (Mar. 19, 2020); California Regional Stay
20 at Home Order 12/03/2020 (Dec. 3, 2020); Blueprint for a Safer
21 Economy, <https://covid19.ca.gov/safer-economy/>. At the height of the
22 pandemic, ICU availability in the Central District of California
23 dropped to 0.0%. Chief Judge Order 21-002, at 1.

24 d. The Federal Bureau of Prisons (BOP) has likewise
25 adopted aggressive procedures to protect federal inmates and combat
26 the spread of COVID-19. The BOP's response has included facility
27 lockdowns, quarantine and isolation measures, restrictions on inmate
28 movement and visitation, and a nationwide vaccination campaign.

1 e. Given these facts, the Central District suspended jury
2 trials to protect public health, reduce the size of public
3 gatherings, and avoid unnecessary travel. See General Order 20-09,
4 at 1. Now, based on improving conditions and data trends documented
5 in accordance with California's Blueprint for a Safer Economy, the
6 Central District has entered the final phase (Phase 3) of its phased
7 reopening plan. In the Southern Division, jury trials will resume on
8 May 10, 2021. C.D. Cal. General Order No. 21-07, at 3 ¶ 3(a) (Apr.
9 15, 2021). In the Western and Eastern Divisions, jury trials will
10 resume on June 7, 2021. See id., at 3 ¶ 3(b).

11 f. As these measures reflect, the coronavirus pandemic is
12 a global emergency that is unprecedented in modern history. The
13 COVID-19 pandemic has required people to take extreme measures to
14 limit contact, and the Central District of California suspended jury
15 trials to safeguard public health. Jury trials have not yet resumed,
16 and even once they do, there will be a substantial backlog of cases
17 that have been continued to protect the public. Moreover, the
18 Central District has designed COVID-related jury trial protocols "to
19 protect the health and safety of all trial participants," and those
20 protocols will limit the number of jury trials that can be conducted
21 simultaneously. General Order 21-07, at 2-3 ¶ 4.

22 g. Based on continued public health concerns and the
23 adoption of safety protocols that will limit the number of jury
24 trials in order to maintain social distancing and protect all trial
25 participants, a continuance of the trial date in this matter will
26 serve the ends of justice and outweigh the interests of the public
27 and defendant in a speedy trial. General Order 21-07, at 3 ¶ 4.
28 Under the extraordinary circumstances of the COVID-19 pandemic, the

1 requested continuance is not based on general congestion of the
2 Court's calendar, lack of diligent preparation by counsel, or any
3 failure on the part of the government to obtain available witnesses.
4 The government does not object to the continuance.

5 h. Failure to grant the requested continuance would
6 likely make a continuation of the proceeding impossible or result in
7 a miscarriage of justice, particularly given the need for a complete
8 and continuously serving jury, which is central to the sound
9 administration of justice. Failure to grant a continuance would also
10 likely put parties, witnesses, jurors, venirepersons, counsel, and
11 Court personnel at risk.

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

27 9. Nothing in this stipulation shall preclude a finding that
28 other provisions of the Speedy Trial Act dictate that additional time

1 periods be excluded from the period within which trial must commence.
2 Moreover, the same provisions and/or other provisions of the Speedy
3 Trial Act may in the future authorize the exclusion of additional
4 time periods from the period within which trial must commence.

5 IT IS SO STIPULATED.

6 Respectfully submitted,

7 Dated: April 28, 2021

TRACY L. WILKISON
Acting United States Attorney

8 BRANDON D. FOX
9 Assistant United States Attorney
Chief, Criminal Division

10
11 /s/

KERRY L. QUINN
Assistant United States Attorney

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13 Attorneys for Plaintiff
14 UNITED STATES OF AMERICA

15
16 Dated: April 28, 2021

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NEHA CHRISTERNA
Deputy Federal Public Defender

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19 Attorney for Defendant
ANDREW MARNELL

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 August 24, 2021 is an informed and
7 voluntary one.

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4/28/2021

9 NEHA CHRISTERNA
10 Deputy Federal Public Defender
11 Attorney for Defendant
12 ANDREW MARNELL
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Date