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January 13, 2023

Hon. Lewis J. Liman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Rafael Martinez,
22 Cr. 251 (LJL)

Dear Judge Liman:

We represent Rafael Martinez and write in response to the government's motion requesting an adjournment of Tuesday's oral argument on Mr. Martinez's motion to dismiss Count One of the Indictment.

The government's motion should be denied. Mr. Martinez was arrested on February 28, 2022. He was indicted on May 2, 2022. He pled not guilty on May 12, 2022. He filed his motion explaining the fatal defects in Count One of the Indictment on December 2, 2022. The government did not concede error or supersede the Indictment but instead opposed the motion on December 23, 2022. Mr. Martinez filed his reply brief on January 6, 2023. Now, on the last business day before oral argument, the government has notified the Court that it intends to supersede the Indictment "in an abundance of caution" at some point in the next fourteen days and proposes putting off adjudication of Mr. Martinez's motion further still.¹

This dilatory approach respects neither the Court's time nor the substantial resources Mr. Martinez has expended in briefing this issue. It may also compromise Mr. Martinez's ability to be ready for the May 1, 2023 trial date set by the Court. The government essentially asks the

¹ The government appears to excuse its own delay in making this request by noting the reply brief's focus on "the precise language of the 'to wit' clause contained in Count One." (Government motion for adjournment at 1.) This is a strange position, given that Mr. Martinez referenced the inadequacy of the "to wit" clause (among other problems) in his initial motion papers six weeks ago, including in the very first paragraph of the Argument section. See, e.g., Memorandum of Law at 2, 9, 11.

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Court not to rule on a fully-briefed motion highlighting the flawed nature of a crime that it charged seven months ago because it intends to get around to charging a different crime at some point in the future. This is inappropriate.

The government should either concede error and consent to the dismissal of Count One or the Court should hold oral argument – along with the *Curcio* proceeding – as scheduled on Tuesday.

Respectfully submitted,

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