

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 22 2021

FOR THE NINTH CIRCUIT

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GARY S. CHRISTENSEN,

Defendant-Appellant,

ALLIANCE BANK OF ARIZONA, a
division of Western Alliance Bank; et al.,

Real-parties-in-interest.

No. 20-10355

D.C. No. 3:14-cr-08164-DGC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

David G. Campbell, District Judge, Presiding

Submitted April 20, 2021**

Before: THOMAS, Chief Judge, TASHIMA and SILVERMAN, Circuit Judges.

Gary S. Christensen appeals pro se from the district court's order granting

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

the government's motions for garnishment disposition under the Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. § 3205(c)(7), to satisfy Christensen's restitution obligation, *see* 18 U.S.C. §§ 3613(a), 3663A. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court correctly found that Christensen's objections to the garnishment writs were untimely filed, and Christensen had provided no good cause or excusable neglect for the delay. *See* Fed. R. Civ. P. 6(b)(1)(B); 28 U.S.C. § 3205(c)(5). Therefore, the district court did not err by denying the objections and granting the government's motions for disposition. *See* 28 U.S.C. § 3205(c)(7) ("After the garnishee files an answer and if no hearing is requested within the required time period, the court shall promptly enter an order directing the garnishee as to the disposition of the judgment debtor's nonexempt interest in such property.").

In any event, Christensen's objections to the garnishment, which he renews on appeal, also fail on the merits. Christensen has not shown that the district court erred in declining to stay the garnishment proceedings pending his challenge to the underlying restitution order. He has also failed to support his argument that the district court's partial grant of coram nobis relief affects the instant garnishment

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ALLIANCE BANK OF ARIZONA, a
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No. 20-10355

D.C. No. 3:14-cr-08164-DGC-1
District of Arizona,
Prescott

ORDER

Before: THOMAS, Chief Judge, TASHIMA and SILVERMAN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Appellant's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 20) are denied.

No further filings will be entertained in this closed case.

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9

10 United States of America,
11 Plaintiff/Respondent,
12 v.
13 Gary Stevens Christensen,
14 Defendant/Petitioner.
15
16

No. CR-14-08164-PCT-DGC
No. CV-20-8152-PCT-DGC (DMF)

ORDER

17
18 The government has filed nine motions for garnishment disposition orders.
19 CR Docs. 245-52, 254.¹ Defendant has responded to the motions and filed objections to
20 the garnishments. CR Docs. 257-58; CV Doc. 22. Defendant also has filed a motion to
21 quash subpoena. CR Doc. 261. The issues are fully briefed (CR Docs. 260, 262-63; CV
22 Doc. 25), and oral argument will not aid the Court's decision, *see* Fed. R. Civ. P. 78(b);
23 LRCiv 7.2(f). For reasons stated below, the Court will deny Defendant's objections to the
24 garnishments, grant the government's motions for disposition orders, and deny
25 Defendant's motion to quash subpoena.
26

27
28 ¹ Documents filed in the criminal case, No. CR-14-08164, are cited as "CR Docs."
~~Documents filed in the related civil action involving Defendant's petition for writ of error~~
coram nobis, No. CV-20-08152, are denoted "CV Docs."

1 **I. Background.**

2 In May 2016, a jury found Defendant guilty of willful tax evasion for the 2004-2010
3 tax years (counts one through seven) and willful failure to file tax returns for the 2009-
4 2010 tax years (counts thirteen and fourteen). CR Docs. 95, 101. Defendant was sentenced
5 to 42 months in prison followed by 3 years of supervised release. CR Doc. 140 at 1. He
6 also was ordered to pay a \$750.00 special assessment and \$1,603,533 in restitution to the
7 Internal Revenue Service. *Id.* at 1-2. On December 26, 2019, Defendant was released from
8 prison and placed on supervised release. *See* Federal BOP, *Find an inmate*, [https://](https://www.bop.gov/mobile/find_inmate/byname.jsp#inmate_results)
9 www.bop.gov/mobile/find_inmate/byname.jsp#inmate_results (last visited Oct. 17, 2020).

10 Pursuant the Federal Debt Collection Procedures Act (“FDCPA”), 28 U.S.C.
11 § 3205, multiple writs of garnishment against Defendant’s property were issued in
12 February and May 2020. CR Docs. 181-92, 237. Each garnishee filed an answer
13 identifying property of Defendant in its custody, possession, or control. CR Docs. 215-27,
14 241.

15 On June 22, 2020, Defendant filed a petition for writ of error challenging the
16 restitution order. CR Doc. 244; CV Doc. 1. The petition is fully briefed (CV Docs. 24, 28),
17 and has been referred to Judge Fine for a report and recommendation (CV Doc. 13).

18 Defendant filed objections to the garnishments on August 28, 2020. CV Doc. 22.
19 The government has moved for disposition orders on the garnishments issued to Brandon
20 Sample PLC; Guggenheim Investments; Jackson National Life Insurance; Massachusetts
21 Mutual Life Insurance; MONY Life Insurance Company of America; National Securities
22 Corporation; TD Ameritrade; Alliance Bank of Arizona; and Appraisals Phoenix & Estates
23 LLC. CR Docs. 245-52, 254. Defendant has filed a response to the motion regarding the
24 Appraisals Phoenix & Estates garnishment and a consolidated response to the other
25 motions. CR Docs. 257-58.

26 **II. Garnishment Legal Standards.**

27 The Mandatory Victims Restitution Act (“MVRA”), 18 U.S.C. § 3663A, “requires
28 a criminal defendant convicted of certain crimes, including those ‘committed by fraud or

1 deceit,’ to pay restitution to the victims of his or her offense in an amount equal to the value
2 of any property damaged or lost in the offense.” *United States v. Ordog*, No. CV 17-1664
3 FMO, 2018 WL 6267814, at *1 (C.D. Cal. Feb. 23, 2018). The “MVRA rests on the
4 recognition that ‘[i]t is essential that the criminal justice system recognize the impact that
5 crime has on the victim, and, to the extent possible, ensure that [the] offender be held
6 accountable to repay these costs.’” *United States v. Novak*, 476 F.3d 1041, 1043 (9th Cir.
7 2007) (quoting S. Rep. No. 104-179, at 18 (1995)). To ensure that accountability, the
8 MVRA’s enforcement provision, 18 U.S.C. § 3613(a), “consolidated and strengthened the
9 procedures available to the government for collecting unpaid restitution.” *United States v.*
10 *Swenson*, 971 F.3d 977, 982 (9th Cir. 2020) (citing *In re Partida*, 862 F.3d 909, 913 (9th
11 Cir. 2017)); see S. Rep. No. 104-179, at 12. That provision states:

12 The United States may enforce a judgment imposing a fine in accordance
13 with the practices and procedures for the enforcement of a civil judgment
14 under Federal law or State law. Notwithstanding any other Federal
15 law[,] . . . a judgment imposing a fine may be enforced against all property
 or rights to property of the person fined[.]

16 § 3613(a); see *Swenson*, 971 F.3d at 983 (“We have recognized from the breadth of the
17 statute’s text Congress’s intent to broaden the government’s collection powers to reach all
18 of a defendant’s assets.”). The MVRA makes clear that these provisions are also “available
19 to the United States for the enforcement of an order of restitution.” § 3613(f).

20 The MVRA “allows the government to enforce restitution orders pursuant to the
21 FDCPA or individual state laws.” *Swenson*, 971 F.3d at 979 n.1 (citing *In re Partida*, 862
22 F.3d at 913). Section 3205 of the FDCPA “sets forth the procedures for garnishment if the
23 government elects to proceed under the FDCPA.” *Id.* Those procedures provide that the
24 government may initiate garnishment proceedings by filing an application for a writ of
25 garnishment before the district court. § 3205(b)(1). If the government satisfies the
26 statutory requirements for a writ, the district court issues a writ of garnishment, and the
27 government serves copies on the judgment debtor and the garnishee. § 3205(b), (c)(3).
28 The garnishee, who is the person or entity with custody, control or possession of the

1 property subject to the writ, is directed to file an answer describing the property.
2 § 3205(c)(4). The government and the judgment debtor then have 20 days to file written
3 objections to the answer and request a hearing. § 3205(c)(5). If no hearing is requested,
4 the district court is required to enter a disposition order “directing the garnishee as to the
5 disposition of the judgment debtor’s nonexempt interest in” the property. § 3205(c)(7);
6 *see United States v. Gorshe*, No. 1:20-MC-00042-BAM, 2020 WL 5905358, at *2 (E.D.
7 Cal. Oct. 6, 2020) (“After the garnishee files an answer, and if no hearing is requested
8 within the required time period, the Court must promptly enter an order directing the
9 garnishee as to the disposition of the judgment debtor’s property.”) (citing § 3205(c)(7));
10 *see SEC v. Gold Standard Mining Corp.*, No. CV 12-5662-JGB (SP), 2017 WL 6043988,
11 at *3 (C.D. Cal. Oct. 26, 2017) (same).

12 **III. Defendant’s Objections to the Writs of Garnishments and Answers.**

13 Defendant objects to the garnishments because they purportedly are premised on an
14 illegal restitution order as set forth in his petition for writ of error. CV Doc. 22 at 1.
15 Defendant further asserts alleged technical failures on the part of the Department of Justice
16 and the Clerk of Court, and alleged errors in the garnishees’ answers. *Id.* The government
17 argues that the objections should be denied because they were not timely filed and
18 Defendant provides no good cause or excusable neglect for the delay. CV Doc. 23 at 2.
19 The Court agrees.

20 Each writ of garnishment included a notice to Defendant that he may object and
21 request a hearing within 20 days after receipt of the notice. CR Docs. 181-92, 237; *see*
22 § 3205(c)(5). On March 3, 2020, the Court extended the time for Defendant to file
23 objections to May 22. CR Docs. 210, 214. When Defendant failed to file objections by
24 the May 22 deadline, the Court gave him until July 6 to do so. CR Docs. 235, 238.
25 Defendant did not file his objections until August 28, more than seven weeks after the
26 July 6 deadline had passed. CV Doc. 22.

27 Defendant contends that the petition for writ of error provides “good cause for delay
28 of objections since the Garnishments would be as illegal as the restitution order they were

1 based on.” *Id.* at 2. Defendant made the same argument in his motion to stay and motion
2 for clarification, both of which were denied. CV Docs. 2, 9, 12, 21. On July 21,
3 2020 – more than two weeks after objections to the garnishments and answers were
4 due – Defendant requested an additional 60 days to file objections. CV Doc. 12 at 2. The
5 government opposed the request because Defendant offered no good cause or excusable
6 neglect for not previously responding to the garnishments, even after he had been granted
7 two extensions of time to do so. Doc. 14. The Court concluded that Defendant had “failed
8 to show good cause or excusable neglect for failing to respond to the pending
9 garnishments[.]” and therefore denied his motion for clarification “to the extent he seeks
10 an extension of time to respond.” CV Doc. 21 at 1-2 (noting that Rule 6(b)(1)(B) provides
11 that “the Court may extend a deadline for good cause ‘on motion made after the time has
12 expired if the party failed to act because of excusable neglect.’”). Defendant provides no
13 basis for the Court to reconsider that ruling. *See* LRCiv 7.2(g)(1) (a motion for
14 reconsideration will be denied absent a showing of manifest error or a showing of new facts
15 or legal authority that could not have been brought to the Court’s attention earlier with
16 reasonable diligence); *Ross v. Arpaio*, No. CV 05-4177-PHX-MHM, 2008 WL 1776502,
17 at *2 (D. Ariz. 2008) (mere disagreement with an order is an insufficient basis for
18 reconsideration).

19 Defendant asserts that the Court has failed to set a date for him to file objections.
20 CV Doc. 25 at 2. This is not correct. The Court twice granted Defendant an extension of
21 time to file objections, setting a final deadline of July 6, 2020. CR Docs. 214, 238. The
22 mere filing of the petition for writ of error and motion to stay did not extend that deadline.
23 *See* CV Doc. 9 at 3 (Defendant “has failed to provide any legal authority to support his
24 request to stay restitution payments and garnishment proceedings pending the outcome of
25 the Petition”). Nor has Defendant otherwise shown good cause or excusable neglect for
26 the failure to file his objections by the July 6 deadline. *See* CV Doc. 21 at 1-2; *Nat’l Corp.*
27 *Tax Credit Funds v. Potashnik*, No. CV 07-3528 PSG (FMOx), 2009 WL 4049396, at *3
28 (C.D. Cal. Nov. 19, 2009) (“Under Rule 6(b)(1)(B), [the moving party] bear[s] the burden

1 of establishing good cause in granting the motion and excusable neglect in failing to act
2 within [the] requisite time frame.”).

3 The Court will deny Defendant’s objections to the garnishments and answers as
4 untimely. CV Doc. 22.

5 **IV. The Government’s Motions for Garnishment Disposition Orders.**

6 Pursuant to § 3205(c)(7), the government moves for garnishment disposition orders
7 because Defendant has not timely objected to the garnishments and answers or requested a
8 hearing. CR Docs. 245-52, 254. The government requests orders directing the garnishees
9 to pay over the non-exempt property of Defendant currently in the garnishees’ custody,
10 possession, or control. *Id.*

11 On November 4, 2016 – one week after the criminal judgment was entered – the
12 government sent Defendant a demand for payment of the judgment amount. CR
13 Doc. 254-2. Defendant asserts that the government’s demand letter does not satisfy the
14 30-day notice and claim of default requirement for the issuance garnishments because no
15 restitution payment was due until he was placed on supervised release in December 2019.
16 CR Doc. 258 at 1-2; *see* 28 U.S.C. § 3205(b)(1)(A). Defendant is mistaken.

17 The Court made clear in its judgment that the \$1,603,533 restitution amount was
18 “due immediately.” CR Doc. 140 at 1-2. The judgment provides that any remaining
19 “[b]alance is due in monthly installments of at least \$6,000.00 to commence 60 days after
20 release from imprisonment to a term of supervised release[,]” but this provision was
21 contingent on Defendant’s failure to pay the full restitution amount immediately. *Id.*; *see*
22 *id.* at 2 (noting that, if incarcerated, “payment of criminal monetary penalties are due during
23 imprisonment at a rate of not less than \$25 per quarter” and “[a]ny unpaid balance shall
24 become a condition of supervision and shall be paid within 90 days prior to the expiration
25 of supervision”); *see also United States v. Gagarin*, 950 F.3d 596, 609 (9th Cir. 2020)
26 (restitution order requiring lump sum payment due immediately with any balance due
27 under an installment plan was proper and not internally inconsistent); *United States v.*
28 *Williams*, 898 F.3d 1052, 1055 (10th Cir. 2018) (holding that “the government was entitled

1 to garnish Defendant's bank account to obtain partial payment of the amount currently due
2 in restitution" because "the judgment specifies that the amount owed is due in full on the
3 date of judgment, regardless of whether the judgment includes a back-up schedule of
4 payments to cover any unpaid amounts"). Because the \$1,603,533 restitution amount was
5 due on October 28, 2016, the date the judgment was entered, and the writs of garnishment
6 were issued in February and May 2020, more than 30 days after Defendant received the
7 government's demand letter, Defendant's argument that the 30-day notice and claim of
8 default requirement had not been met when the writs of garnishment issued is without merit
9 and provides no basis for denying the government's motions for disposition orders.

10 What is more, the judgment provides that the monthly payments "do not preclude
11 the government from using any other anticipated or unexpected financial gains, assets, or
12 income of [D]efendant to satisfy the restitution obligations." CR Doc. 140 at 2. In pursuing
13 the garnishments, the government is using other assets to satisfy Defendant's restitution
14 obligations. *See United States v. Behrens*, 656 F. App'x 789, 790 (8th Cir. 2016) ("[T]he
15 payment schedule set forth in the judgment did not preclude the instant garnishment,
16 because the judgment specified that the amount owed was due in full on the date of
17 judgment; and notably, the judgment imposed the obligation to make installment payments
18 without limiting the government's ability to institute civil collections proceedings.");
19 *United States v. Shusterman*, 331 F. App'x 994, 996-97 (3d Cir. 2009) ("The judgment
20 provides that restitution is due immediately and recommends that Shusterman participate
21 in the Bureau of Prisons Inmate Financial Responsibility Program. The judgment further
22 provides that, in the event the entire restitution is not paid before the commencement of
23 supervision, Shusterman shall pay monthly installments of not less than \$250.00. The
24 District Court did not err in allowing garnishment as an additional means to collect the
25 restitution judgment.").

26 Defendant asserts that the garnishments are an attempt to collect an illegal
27 restitution order as set forth in his petition for writ of error. CR Docs. 257, 258 at 2. The
28 Court previously held that restitution payments and garnishment proceedings will not be

1 stayed pending the outcome of the petition. CV Doc. 9 at 3. Defendant provides no basis
2 for the Court to reconsider that ruling. *See* LRCiv 7.2(g)(1).

3 Section 3205(c)(7) provides that “[a]fter the garnishee files an answer and if no
4 hearing is requested within the required time period, the court shall promptly enter an order
5 directing the garnishee as to the disposition of the judgment debtor’s nonexempt interest in
6 such property.” *See United States v. Gonzales*, No. 1:20-MC-00033-BAM, 2020 WL
7 4463364, at *2 (E.D. Cal. Aug. 4, 2020). Because Defendant has made no timely
8 objections or a request for a hearing on the garnishments, the Court will grant the
9 government’s motions for disposition orders. CR Docs. 245-52, 254; *see United States v.*
10 *Diaz Landa*, No. 1:18-mc-00020-DAD-BAM, 2019 WL 3026993, at *2 (E.D. Cal. July 11,
11 2019) (“Pursuant to 28 U.S.C. § 3205(c)(7), as no hearing was requested during the
12 applicable time period, the Court must enter an order directing the Garnishee as to the
13 disposition of the bank accounts.”).²

14 **V. Defendant’s Motion to Quash Subpoena.**

15 To enforce a restitution order, the government may seek “discovery regarding the
16 financial condition of the debtor in the manner in which discovery is authorized by the
17 Federal Rules of Civil Procedure[.]” 28 U.S.C. § 3015(a); *see* 18 U.S.C. § 3613(a), (f) (the
18 United States may enforce an order of restitution “in accordance with the practices and
19 procedures for the enforcement of a civil judgment”). Rule 69 of the Federal Rules of Civil
20 Procedure provides that a judgment creditor “may obtain discovery from any
21 person – including the judgment debtor – as provided in these rules[.]” Fed. R. Civ. P.
22 69(a)(2). Rule 45 provides for the issuance of subpoenas commanding that documents be
23 produced. Fed. R. Civ. P. 45(a)(1)(D).

24 The government issued a subpoena to Defendant in February 2020, requesting
25 documents regarding Defendant’s assets, finances, and businesses. CV Doc. 261 at 8-14.

26
27 ² Defendant complains that the 15-30% commission for the liquidation of assets
28 (precious metals) by Appraisals Phoenix & Estates is too expensive. CR Doc. 257 at 2-3.
The government has found another company, T&T Estates, which will liquidate the
precious metals for a commission of less than 5%. CR Docs. 254 at 3-4, 260 at 5; *see* T&T
Estates, <https://www.ttestateservices.com/> (last visited Oct. 20, 2020).

1 The government informed Defendant that he could mail copies of the subpoenaed
 2 documents to avoid having to appear with the documents in person. *Id.* at 7. On March 20,
 3 Defendant appeared in person at the United States Attorney's Office in Tucson with
 4 subpoenaed records. *See id.* at 5. An initial review revealed that some of the documents
 5 contained attorney-client privileged information. *Id.* The government and Defendant's
 6 counsel agreed that the government would destroy its copy of the records and that counsel
 7 would work with Defendant to send a new set of subpoenaed records without any
 8 privileged information. *Id.*; *see* CR Doc. 262-2 at 12-13. The Court granted counsel's
 9 motion to withdraw on May 22. CR Docs. 234, 238. On September 10, the government
 10 sent a letter to Defendant requesting that he comply with the subpoena by October 12. CR
 11 Doc. 261 at 5. Defendant filed his motion to quash the subpoena five days later. *Id.* at 1-3.

12 Rule 45(d)(3)(A) requires a court to grant a motion to quash where the subpoena
 13 "(i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the
 14 geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other
 15 protected matter, if no exception or waiver applies; or (iv) subjects a person to undue
 16 burden." *See Strike 3 Holdings, LLC v. Doe*, No. CV-19-10674-TJH (SPx), 2020 WL
 17 5357793, at *2 (C.D. Cal. Apr. 28, 2020). The government has given Defendant a
 18 reasonable amount of time to comply with the subpoena without disclosing privileged
 19 information, and will allow him to provide the requested documents via mail or email. CR
 20 Doc. 261 at 5.³ Defendant claims that because he already has complied with the subpoena,
 21 requiring him to send a new set of records to the government constitutes an undue burden
 22 under Rule 45(d)(3)(A)(iv). *Id.* at 2-3. But the government, with the consent of
 23 Defendant's counsel, destroyed the initial set of records because they contained privileged
 24 information. Defendant has not shown that sending an appropriate set of records to the
 25

26
 27 ³ Alternatively, as the government did with Defendant's counsel, the government
 28 offers to arrange for production of the documents in Flagstaff, Arizona. Given the current
 limited staffing of its Flagstaff office due to Covid restrictions, the government requests
 that Defendant be required to coordinate a specific date and time if he elects to deliver the
 records in person at Flagstaff or another location. Doc. 262 at 4.

1 government would be unduly burdensome. The Court will deny Defendant's motion to
2 quash the subpoena.

3 **IT IS ORDERED:**

4 1. The government's motions for garnishment disposition orders (CR
5 Docs. 245-52, 254) are **granted**.

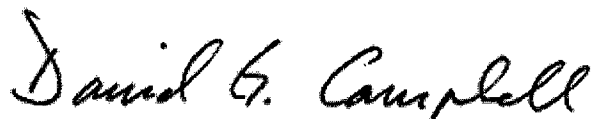
6 2. Garnishee Appraisals Phoenix & Estates LLC shall deliver the non-exempt
7 property belonging to Defendant Gary Christensen (*see* CR Doc. 241) to T&T Estate
8 Services by **November 13, 2020**. T&T Estate Services shall, as soon as reasonably
9 practicable, liquidate the non-exempt property belonging to Defendant and pay over the
10 liquidated amount of the property, less reasonable costs of liquidation, to the United States.

11 3. Garnishees Brandon Sample PLC, Guggenheim Investments, Jackson
12 National Life Insurance, Massachusetts Mutual Life Insurance, MONY Life Insurance
13 Company of America, National Securities Corporation, TD Ameritrade, and Alliance Bank
14 of Arizona, shall pay over Defendant Gary Christensen's nonexempt property (*see* CR
15 Docs. 215-16, 218-22, 224) to the United States by **November 13, 2020**.

16 4. Funds paid over to the United States should be in the form of a cashier's
17 check made payable to the Clerk of the Court, and mailed to the Clerk's Office, U.S.
18 District Court, Sandra Day O'Connor Courthouse, 401 West Washington Street, Attention
19 Finance Division, Suite 130, SPC-1, Phoenix, Arizona 85003-2118. Checks should include
20 the annotation "U.S. v. Gary Christensen, CR-14-08164-PCT-DGC" in the memo section.

21 5. Defendant's motion to quash subpoena (CR Doc. 261) is **denied**. Defendant
22 shall comply with the subpoena either by mail, email, or in person delivery by
23 **November 13, 2020**. Given the current limited staffing of government offices due to
24 Covid restrictions, Defendant shall coordinate with the government to schedule a specific
25 date and time if he elects to deliver the records in person at Flagstaff or another location.

26 Dated this 27th day of October, 2020.

27 

28 **David G. Campbell**
Senior United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**
