

IN THE UNITED STATES SUPREME COURT

MARIA ANDREA GONZALEZ,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT**

Appendix

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEP 22 2021

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIA ANDREA GONZALEZ,

Defendant-Appellant.

No. 19-30273

D.C. No.
1:18-cr-02005-SAB-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Stanley A. Bastian, Chief District Judge, Presiding

Argued and Submitted September 1, 2021
Seattle, Washington

Before: HAWKINS, TASHIMA, and McKEOWN, Circuit Judges.

Defendant Maria Andrea Gonzalez (“Gonzalez”), convicted following a jury trial of possession with intent to distribute methamphetamine and heroin, possession of a firearm in furtherance of a drug trafficking crime, and felon in possession of a firearm, appeals the district court’s ruling on two pretrial motions, in which she sought to have the case dismissed with prejudice under the Speedy Trial Act and

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

Sixth Amendment and to suppress evidence found in her purse when she was arrested. We affirm.

I.

There was no violation of the Speedy Trial Act. All time when pretrial motions were pending was automatically excluded under 18 U.S.C. § 3161 (h)(1)(D). Delays for the “ends of justice” are also excluded if the court sets forth “its reasons for finding that the ends of justice served by the granting of [a] continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.* § 3161(h)(7)(A).

There were four total motions to continue, all made by defense counsel. Gonzalez does not challenge the propriety of the first continuance, made by her original counsel. With respect to the second and third continuances, her newly appointed counsel articulated legitimate reasons for needing additional time to prepare the defense, including the need to review recently provided discovery, prepare pretrial motions, and, when Gonzalez was charged with another federal crime while in custody, the need to coordinate with her other defense counsel and to deal with additional sentencing considerations. There was no clear error in determining that the ends of justice served by these continuances outweighed society and defendant’s interest in a speedy trial, *United States v. Medina*, 524 F.3d 974, 982 (9th Cir. 2008), and the court sufficiently articulated its reasons for granting the

exclusions. *United States v. McCarns*, 900 F.3d 1141, 1145 (9th Cir. 2018). These two ends of justice exclusions, coupled with the automatic exclusions for pending motions, bring the trial well within the Speedy Trial Act's 70-day window.¹

Likewise, there was no error in determining that the case should not be dismissed with prejudice for violating Gonzalez's Sixth Amendment right to a speedy trial. *See Barker v. Wingo*, 407 U.S 514, 530–34 (1972) (discussing factors to be weighed). The district court acknowledged that the delay was over a year total, but balanced this against the cause of the delay, which included continuances requested by defense counsel in order better to represent the defendant at trial. In addition, some of the delay was caused by Gonzalez being charged with an additional crime while in pretrial custody for this offense. Nor did Gonzalez suffer actual prejudice from the delay, such as loss of evidence or unavailability of witnesses.

II.

Gonzalez also sought to suppress the evidence found in her purse, contending it was not a valid search incident to arrest because at the time of the search she had been handcuffed, transferred to the custody of another officer, and placed in the back

¹ This is the case even accepting Gonzalez's argument that the Motion in Limine/Motion to Sever was only pending until May 24, 2018. *See United States v. Clymer*, 25 F.3d 824, 830–31 (9th Cir. 1994). For this reason, we need not address the fourth ends of justice exclusion.

of a patrol car about twenty feet away from the purse. *See Arizona v. Gant*, 556 U.S. 332, 343–44 (2009). However, “we need not decide whether the initial search was lawful,” because we agree with the district court that the evidence would have been admissible under the inevitable discovery doctrine during “a routine inventory search.” *United States v. Andrade*, 784 F.2d 1431, 1433 (9th Cir. 1986).

Gonzalez is correct that under Washington law, if she had been arrested only on the outstanding warrant, she could have theoretically posted bail and avoided the booking and inventory search process altogether. *United States v. Peterson*, 902 F.3d 1016, 1020 (9th Cir. 2018). However, this is not the end of the inquiry because here, as in *Peterson*, there was a significant struggle with the officer as he attempted to arrest Gonzalez, including pulling her hand out of the officer’s grasp and reaching for her purse. At the evidentiary hearing, the officer testified that had he not searched the purse and discovered the drugs and weapons, he would have cited Gonzalez for resisting arrest. As we explained in a similar situation in *Peterson*:

Peterson’s ability to post bail on the [outstanding] warrants, however, has no bearing on whether his backpack would have been subject to an inventory search had he been booked on charges of obstructing law enforcement officers or resisting arrest because bail had not yet been set on those charges at the time Peterson was booked. . . . Because the officers would have booked Peterson on obstruction or resisting arrest charges absent discovery of the gun, and because bail had not yet been set on those charges, Peterson would have been taken into custody upon booking.

Id.

Although in his testimony the officer here used the word “cited” rather than “arrested” when discussing the hypothetical resisting arrest charge, in the larger context of the questioning as a whole it was not unreasonable for the district court to infer that the officer meant that if he had not discovered the additional evidence of felony charges, he would have instead booked Gonzalez on a resisting arrest charge, no bail would have yet been set for this charge, and therefore there would have been an inventory search of the purse pursuant to that arrest. Thus, the evidence in Gonzalez’s purse would inevitably have been discovered. *Id.*

AFFIRMED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 22, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,
v.
MARIA ANDREA GONZALEZ,
Defendant.

No. 1:18-cr-02005-SAB

**ORDER RE: PRETRIAL
MOTIONS**

On January 9, 2019, the Court held a pretrial conference in the above-captioned matter. Troy Lee and Tim Nguyen appeared on behalf of Defendant, who was present in the courtroom, and Ian Garriques appeared on behalf of the Government.

At the hearing, the Court ruled from the bench and denied Defendant's Motion to Dismiss, ECF No. 91. The Court took Defendant's Motion to Suppress Evidence, ECF No. 92, under advisement. After careful consideration of the parties' briefing and oral argument, the Court **denies** Defendant's Motion to Suppress.

FACTUAL BACKGROUND¹

Yakima Police Department Detective Drew Shaw had been trying to locate Maria Gonzalez since June 2017. Detective Shaw wanted to question Ms. Gonzalez about her involvement in a local murder. Ms. Gonzalez had at the time

¹ The parties stipulate that the facts of this case are found in the Yakima Police Department Report for Incident 17Y051546 found at ECF No. 92-1, and Detective Shaw's oral testimony at the pretrial conference.

ORDER RE: PRETRIAL MOTION

1 an outstanding felony warrant for possession of a controlled substance,
2 methamphetamine. ECF No. 101-1. Detective Shaw sought to arrest Ms. Gonzalez
3 pursuant to the active warrant, and use it as an opportunity to speak with her about
4 the murder.

5 On November 21, 2017, Detective Shaw received a phone call from ATF
6 Special Agent Alconaba informing him that Ms. Gonzalez was in Yakima,
7 Washington, and was likely staying at a local motel referred to as the “Economy.”
8 Detective Shaw was familiar with two motels in Yakima with the words
9 “Economy” and “Econo” in their name. Detective Shaw spent some time
10 surveilling both locations.

11 At approximately 1355 hours, Detective Shaw turned into the parking lot at
12 the Economy Inn at 1405 North First Street in Yakima. According to Detective
13 Shaw, North First Street in Yakima is known as a “hub” for criminal activity.
14 When Detective Shaw pulled into the Economy Inn, he immediately focused on a
15 blue Nissan Versa parked near the front door of the motel. Detective Shaw
16 observed a woman sitting in the driver’s seat. He suspected this to be Maria
17 Gonzalez. Detective Shaw observed the woman exit the vehicle and approach the
18 motel lobby. She was carrying a large beige purse on her shoulder.

19 Detective Shaw wanted to confirm the woman’s identity before she entered
20 the motel lobby. He approached the woman as she reached the door at the
21 entrance. Detective Shaw observed the woman struggling to open the lobby door
22 with an access card. Detective Shaw noticed her hands shaking uncontrollably.
23 When Detective Shaw got close enough, he recognized the woman as Maria
24 Gonzalez and told her that it was time for her to go to jail. Ms. Gonzalez continued
25 to try and gain entry into the motel lobby.

26 Detective Shaw grabbed Ms. Gonzalez’s arms, told her she was under arrest,
27 and ordered that she place her hands behind her back. Ms. Gonzalez immediately
28 tensed up and began resisting arrest. Detective Shaw struggled to place Ms.

1 Gonzalez's hands behind her back and she continued to attempt to pull away.
2 Detective Shaw eventually pushed Ms. Gonzalez over a large flower pot in order
3 to gain control.

4 During the struggle, Ms. Gonzalez's purse fell off of her shoulder and hit
5 the ground next to her feet. Ms. Gonzalez immediately blurted out, "that's not my
6 purse." As Detective Shaw continued to struggle gaining control over Ms.
7 Gonzalez, she stated something to the effect of, "I'm going to piss my pants."
8 Detective Shaw pushed her down to her knees, at which point he observed a
9 puddle of liquid accumulate under her knees which appeared to be urine.

10 After finally gaining control of her hands, Detective Shaw removed his
11 handcuffs and placed one cuff on Ms. Gonzalez's right hand, but her left hand
12 broke free from Detective Shaw's grasp and appeared to be reaching for her purse.
13 Detective Shaw was able to regain control and handcuff both of Ms. Gonzalez's
14 hands.

15 After properly securing Ms. Gonzalez in handcuffs, Detective Shaw
16 proceeded to call for assistance. Officer Schershligt, Detective Cays, and
17 Detective Pepper arrived approximately thirty seconds to a minute after Detective
18 Shaw placed the call. Officer Schershligt proceeded to take custody of Ms.
19 Gonzalez and placed her in the back of his patrol car. The purse remained in
20 Detective Shaw's control, approximately twenty feet away from Officer
21 Schershligt's patrol car.

22 Detective Shaw proceeded to search the purse in the presence of Detective
23 Cays and Detective Pepper, while Ms. Gonzalez was handcuffed in the back of
24 Officer Schershligt's patrol car. Detective Shaw found several different controlled
25 substances and a loaded firearm. Ms. Gonzalez was transported to the Yakima
26 County jail and booked on two counts of possession of a controlled substance with
27 intent to deliver, unlawful possession of a firearm, and the outstanding felony

28

1 warrant. At some point after her arrest and incarceration, Ms. Gonzalez posted
2 bond and was released pending trial on her state charges.

3 **PROCEDURAL HISTORY**

4 **Initial Indictment**

5 On January 18, 2018, the Grand Jury returned a Sealed Indictment charging
6 Ms. Gonzalez with (1) Possession with Intent to Distribute 50 Grams or More of
7 Actual Methamphetamine; (2) Possession of a Firearm in Furtherance of Drug
8 Trafficking Crime; and (3) Felon in Possession of Firearm and Ammunition. ECF
9 No. 1.

10 On January 22, 2018, federal law enforcement arrested Ms. Gonzalez
11 pursuant to the Sealed Indictment as she was leaving the Yakima County Superior
12 Court. During her arrest, law enforcement officers found Ms. Gonzalez in
13 possession of methamphetamine and heroin. Magistrate Judge Dimke appointed
14 CJA attorney Michael Lynch to represent Ms. Gonzalez in this matter.

15 **Superseding Indictment**

16 On March 13, 2018, the Grand Jury returned a Superseding Indictment
17 charging Ms. Gonzalez with (1) Possession with Intent to Distribute 50 Grams or
18 More of Actual Methamphetamine; (2) Possession with Intent to Distribute 100
19 Grams or More of a Mixture and Substance Containing a Detectible Amount of
20 Heroin; (3) Possession of a Firearm in Furtherance of Drug Trafficking Crime; (4)
21 Felon in Possession of Firearm and Ammunition; (5) Possession with Intent to
22 Distribute 5 Grams or More of Actual Methamphetamine; and (6) Possession with
23 Intent to Distribute a Mixture and Substance Containing a Detectible Amount of
24 Heroin. ECF No. 38. The Superseding Indictment included new charges related to
25 the drugs found in Ms. Gonzalez's possession when she was arrested by federal
26 law enforcement on January 22, 2018.

27 //

28 //

ORDER RE: PRETRIAL MOTION

First Motion to Continue

2 The Court held a pretrial conference on March 21, 2018, Michael Lynch
3 appeared on behalf of Ms. Gonzalez, who was present in the courtroom, and Ian
4 Garriques appeared on behalf of the Government. Mr. Lynch requested additional
5 time to investigate and prepare for trial. The Government agreed that the
6 circumstances of this case warranted a continuance. Ms. Gonzalez orally objected
7 to her attorney's request.

8 The Court granted Mr. Lynch's request for a continuance pursuant to 18
9 U.S.C. § 3161(h)(7)(A) and (h)(7)(B)(iv), finding that the ends of justice were
10 served by granting the continuance, and that a failure to grant a continuance would
11 deny counsel for Ms. Gonzalez reasonable time necessary for effective
12 preparation. ECF No. 57.

New Counsel

14 On March 26, 2018, Mr. Lynch filed an ex parte Motion to Withdraw as
15 Counsel for Defendant, ECF No. 59. On March 28, 2018, the Court granted Mr.
16 Lynch's request to withdraw, finding the attorney-client relationship between Mr.
17 Lynch and Ms. Gonzalez was irretrievably broken. ECF No. 63. The Court
18 referred the matter to Judge Dimke for appointment of new counsel.

19 On April 2, 2018, Judge Dimke appointed Troy Lee and Tim Nguyen to
20 represent Ms. Gonzalez in this matter.

Second Superseding Indictment

22 On April 10, 2018, the Grand Jury returned a Second Superseding
23 Indictment. ECF No. 66. The Second Superseding Indictment amended the
24 quantity of methamphetamine in Count 5.

Second Motion to Continue

26 On May 21, 2018, Mr. Lee and Mr. Nguyen filed a Motion to Continue Trial
27 and Pretrial Dates, ECF No. 77. On May 23, 2018, the Court held a pretrial
28 conference and addressed the motion to continue. Troy Lee and Tim Nguyen

ORDER RE: PRETRIAL MOTION

1 appeared on behalf of Ms. Gonzalez, who was present in the courtroom, and Ian
2 Garriques appeared on behalf of the Government. Mr. Lee and Mr. Nguyen, who
3 had recently been appointed, requested additional time to review discovery and
4 prepare an adequate defense on behalf of Ms. Gonzalez. The Government agreed
5 with defense counsel that the circumstances of the case warranted a continuance.
6 Ms. Gonzalez, again, objected to her attorneys' request.

7 The Court granted the motion to continue pursuant to 18 U.S.C. §
8 3161(h)(7)(A) and (h)(7)(B)(iv), finding that the ends of justice were served by
9 granting the continuance, and that a failure to grant a continuance would deny
10 counsel for Ms. Gonzalez reasonable time necessary for effective preparation.
11 ECF No. 81.

12 **Third Motion to Continue**

13 On July 17, 2018, Mr. Lee and Mr. Nguyen filed another Motion to
14 Continue Trial and Pretrial Dates, ECF No. 82. On July 18, 2018, the Court held a
15 pretrial conference and addressed the motion to continue. Troy Lee and Tim
16 Nguyen appeared on behalf of Ms. Gonzalez, who was present in the courtroom,
17 and Ian Garriques appeared on behalf of the Government. Ms. Gonzalez had
18 recently been indicted on new federal criminal charges (No. 1:18-CR-02039-SAB-
19 1), and Mr. Lee and Mr. Nguyen requested additional time to discuss these new
20 allegations with Stephen Hormel, who is representing Ms. Gonzalez in the
21 separate case. Ms. Gonzalez, again, objected to her attorneys' request for a
22 continuance.

23 The Court granted the motion to continue pursuant to 18 U.S.C. §
24 3161(h)(7)(A) and (h)(7)(B)(iv), finding that the ends of justice were served by
25 granting the continuance, and that a failure to grant a continuance would deny
26 counsel for Ms. Gonzalez reasonable time necessary for effective preparation.
27 ECF No. 84.

28 //

ORDER RE: PRETRIAL MOTIC

Fourth Motion to Continue

2 On November 2, 2018, Mr. Lee and Mr. Nguyen filed another Motion to
3 Continue Trial and Pretrial Dates, ECF No. 60. On November 7, 2018, the Court
4 held a pretrial conference and addressed the motion to continue. Troy Lee and Tim
5 Nguyen appeared on behalf of Ms. Gonzalez, who was present in the courtroom,
6 and Ian Garriques appeared on behalf of the Government. Mr. Lee and Mr.
7 Nguyen advised the Court that they needed additional time to prepare for trial,
8 given the status of Ms. Gonzalez’s new criminal charges. Additionally, Mr. Lee
9 and Mr. Nguyen wanted more time to file pretrial motions. The Government did
10 not object to the requested continuance.

11 Ms. Gonzalez, on the other hand, objected to her attorneys' request. Ms.
12 Gonzalez informed the Court that she did not believe her attorneys need any more
13 time to prepare for trial.

14 The Court granted the motion to continue pursuant to 18 U.S.C. §
15 3161(h)(7)(A) and (h)(7)(B)(iv), finding that the ends of justice were served by
16 granting the continuance, and that a failure to grant a continuance would deny
17 counsel for Ms. Gonzalez reasonable time necessary for effective preparation.
18 ECF No. 90.

19 On December 7, 2018, Ms. Gonzalez filed a Motion to Dismiss, ECF No.
20 91, and Motion to Suppress Evidence, ECF No. 92.

DISCUSSION

I. Motion to Dismiss

23 Ms. Gonzalez argues that the indictment in this case should be dismissed
24 because her Sixth Amendment right to speedy trial was violated.

25 The Sixth Amendment guarantees that, “[i]n all criminal prosecutions, the
26 accused shall enjoy the right to a speedy ... trial” *Doggett v. U.S.*, 505 U.S.
27 647, 651 (1992). The Speedy Trial Act “was enacted in part out of the
28 dissatisfaction with sixth amendment speedy trial jurisprudence, and put more life

1 into defendants' speedy trial rights." *U.S. v. Nance*, 666 F.2d 353, 360 (9th Cir.
2 1982). As a result, the Ninth Circuit has recognized that "it will be an unusual case
3 in which the time limits of the Speedy Trial Act have been met but the sixth
4 amendment right to speedy trial has been violated." *Id.*; *see also U.S. v. Baker*, 63
5 F.3d 1478, 1497 (9th Cir. 1995) ("Speedy Trial Act affords greater protection to a
6 defendant's right to a speedy trial than is guaranteed by the Sixth Amendment, and
7 therefore a trial which complies with the Act raises a strong presumption of
8 compliance with the Constitution.").

9 In *Barker v. Wingo*, the Supreme Court established the balancing test used
10 to determine whether a defendant's Sixth Amendment right to speedy trial has
11 been violated. 407 U.S. 514, 530-33 (1972). The factors to be considered are: (1)
12 the length of the delay; (2) the reason for the delay; (3) the defendant's assertion
13 of the right; and (4) the prejudice resulting from the delay. *Id.*

14 **(1) Length of Delay**

15 There are two components to the first *Barker* factor. First, simply to trigger
16 a speedy trial analysis, the defendant must show that the period of time between
17 indictment and trial passes a threshold point of "presumptively prejudicial" delay.
18 *Doggett*, 505 U.S. at 651-52 (citing *Barker*, 407 U.S. at 530-31). If this threshold
19 is met, the Court will proceed to the remaining *Barker* factors. *See Doggett*, 505
20 U.S. at 652.

21 If the defendant shows a "presumptively prejudicial" delay, then the Court
22 considers "the extent to which the delay exceeds the threshold point in light of the
23 degree of diligence by the government and acquiescence by the defendant to
24 determine whether sufficient prejudice exists to warrant relief." *U.S. v. Beamon*,
25 992 F.2d 1009, 1012 (9th Cir. 1993).

26 Courts have generally found delays approaching one year to be
27 "presumptively prejudicial." *Doggett*, 505 U.S. at 652 n.1; *Beamon*, 992 F.2d at
28 1012-13.

ORDER RE: PRETRIAL MOTION

1 In this case, Ms. Gonzalez was initially indicted on January 18 2018, and
2 her jury trial is currently scheduled for February 4, 2019. This results in a delay of
3 almost thirteen months. The Court finds the length of delay raises a presumption
4 of prejudice and thus warrants a review of the remaining *Barker* factors. (The
5 Court makes this finding very reluctantly because all of the continuance requests
6 were made by defense counsel).

7 **(2) Reason for Delay**

8 The second factor requires the Court to focus on the reasons behind the
9 delay. The Ninth Circuit has instructed that this is the “focal inquiry” of the
10 *Barker* analysis. *U.S. v. King*, 483 F.3d 969, 976 (9th Cir. 2007).

11 Ms. Gonzalez focuses exclusively on the actions of her initial attorney,
12 Michael Lynch. Ms. Gonzalez argues that Mr. Lynch’s request for a continuance
13 was unreasonable because, according to Mr. Lee and Mr. Nguyen, this is a simple
14 case. “[Ms. Gonzalez’s] offense – *albeit* have a potential of serving a minimum of
15 life in prison – are legally simple and should not have required more time as
16 requested by her previous attorney as discovery should have been completed
17 before the initial trial date.” Defendant’s Motion to Dismiss at 7.

18 The Government argues that any delay in Ms. Gonzalez’s case is not
19 attributable to the Government; the blame rests solely on the actions of Ms.
20 Gonzalez and her counsel. More Specifically, the Government asserts the delay
21 was caused by Ms. Gonzalez filing pretrial motions, including motions to revisit
22 detention status and motions to continue. Additionally, the Government notes that
23 Ms. Gonzalez was indicted on sexual assault charges that occurred while she was
24 in custody awaiting trial in this case. No. 1:18-CR-2039-SAB-1. These new
25 charges have caused her attorneys to request a continuance on two occasions. *See*
26 ECF Nos. 77, 87.

27 The Court finds this case has experienced a lengthy delay for reasons that
28 are not attributable to the Government. Moreover, the Court notes that most of the

1 periods of delay is properly excludable under the Speedy Trial Act, 18 U.S.C. §
2 3161. For example, all periods of delay during which pretrial motions were
3 pending are automatically excludable from the speedy trial calculation, 18 U.S.C.
4 § 3161(h)(1)(D); and all periods of delay based on the Court’s “ends of justice”
5 findings are also excludable from the speedy trial computation, 18 U.S.C. §
6 3161(h)(7)(A), (h)(7)(B)(iv).

7 **(3) Defendant’s Assertion of the Right**

8 A defendant’s assertion of her right to speedy trial “is entitled to strong
9 evidentiary weight in determining whether the defendant [was] deprived of the
10 right.” *Barker*, 407 U.S. at 531-32. In this case, Ms. Gonzalez repeatedly asserted
11 her right to a speedy trial by orally objecting to a continuance every time one was
12 granted. ECF Nos. 57, 81, 84, 90.

13 Even repeated assertions of the right to speedy trial, however, must be
14 viewed in light of defendant’s other conduct. *U.S. v. Loud Hawk*, 474 U.S. 302,
15 314 (1986). Here, Ms. Gonzalez engaged in conduct that resulted in new criminal
16 charges, which required her attorney to request a continuance on two occasions.
17 ECF Nos. 77, 87. Thus, this factor weighs only slightly in favor of Ms. Gonzalez.

18 **(4) Prejudice**

19 “[A]ctual prejudice can be shown in three ways: oppressive pretrial
20 incarceration, anxiety and concern of the accused, and the possibility that the
21 accused’s defense will be impaired.” *Beamon*, 992 F.2d at 1014 (citing *Doggett*,
22 505 U.S. at 652). The Court finds Ms. Gonzalez has failed to show she has
23 suffered any actual prejudice as a result of the delay.

24 **CONCLUSION**

25 After reviewing the *Barker* factors, the Court finds Ms. Gonzalez’s Sixth
26 Amendment right to speedy trial was not violated. Additionally, there is a “strong
27 presumption” that her right to speedy trial was not violated because there does not
28 appear to be a violation of the Speedy Trial Act. *Baker*, 63 F.3d at 1497.

1 **II. Motion to Suppress Evidence**

2 Ms. Gonzalez also moves to suppress the evidence found inside of her
3 purse, arguing that it was discovered pursuant to a warrantless search in violation
4 of the Fourth Amendment. The Government contends the evidence should not be
5 suppressed because Detective Shaw conducted a valid search of the purse incident
6 to Ms. Gonzalez's arrest.

7 **Search Incident to Arrest**

8 The Fourth Amendment protects individuals against unreasonable searches
9 and seizures. *Katz v. U.S.*, 389 U.S. 347, 353 (1967). Warrantless searches are *per*
10 *se* unreasonable, subject only to a few specific, well-delineated exceptions. *Id.* at
11 357. These exceptions include, among others, a search incident to a lawful arrest.
12 *U.S. v. Cook*, 808 F.3d 1195, 1199 (9th Cir. 2015) (citing *Arizona v. Gant*, 556
13 U.S. 332, 338 (2009)).

14 “When making a lawful arrest, police may conduct a warrantless search of
15 the area within the arrestee’s immediate control, that is, ‘the area from within
16 which [she] might gain possession of a weapon or destructible evidence.’ ” *U.S. v.*
17 *Turner*, 926 F.2d 883, 887 (9th Cir. 1991) (quoting *Chimel v. California*, 395 U.S.
18 752, 763 (1969)). In *Gant*, the Supreme Court explained that the “immediate
19 control” requirement “ensures that the scope of a search incident to arrest is
20 commensurate with its purpose of protecting arresting officers and safeguarding
21 any evidence of the offense of arrest that an arrestee might conceal or destroy.”²
22 *Gant*, 556 U.S. at 339.

23 Additionally, to fall within the exception, a search incident to arrest must be
24 conducted at “about the same time as the arrest.” *U.S. v. Andersson*, 813 F.2d
25

26 ² The Ninth Circuit has held *Grant*’s holding applies to searches outside the
27 automobile context because “the [Supreme] Court tethered its rational to concerns
28 articulated in *Chimel*, which involved a search of an arrestee’s home.” *Cook*, 808
F.3d at 1199 n.1.

1 1450, 1456 (9th Cir. 1987). While “[t]here is no fixed outer limit for the number of
2 minutes that may pass between an arrest and a valid, warrantless search,” *U.S. v.*
3 *McLaughlin*, 170 F.3d 889, 892 (9th Cir. 1999), the search must be “spatially and
4 temporally incident to the arrest,” *U.S. v. Camou*, 773 F.3d 932, 937 (9th Cir.
5 2014). *See also U.S. v. Smith*, 389 F.3d 944, 951 (9th Cir. 2004) (interpreting the
6 temporal requirement to mean that the search must be “roughly contemporaneous
7 with the arrest.”).

8 The Government bears the burden of justifying a warrantless search. *U.S. v.*
9 *Johnson*, 936 F.2d 1082, 1084 (9th Cir. 1991).

10 Ms. Gonzalez argues that, at the time of its search, the purse was not in her
11 immediate control. More specifically, at the time of the search, Ms. Gonzalez was
12 fully handcuffed and transferred into the custody and control of Officer
13 Schershligt, who placed her in the backseat of his patrol car, approximately twenty
14 feet away from the purse. Given her status at the time of the search, Ms. Gonzalez
15 argues that the two principles for a valid search incident to arrest – officer safety
16 and preservation of evidence – were absent, and thus the exception does not apply.
17 *Gant*, 556 U.S. at 339.

18 The Government argues the facts and circumstances surrounding Ms.
19 Gonzalez’s arrest demonstrate that the search of Ms. Gonzalez’s purse was a valid
20 search incident to arrest. First, the Government argues the search was justified
21 because it was conducted for purposes of officer safety. While Detective Shaw
22 was planning on arresting Ms. Gonzalez pursuant to an outstanding felony
23 warrant, he was primarily interested in speaking with her about her potential
24 involvement in a murder. Moreover, Detective Shaw testified that he had received
25 information from the ATF that Ms. Gonzalez had also been involved in a shooting
26 in Spokane.

27
28
ORDER RE: PRETRIAL MOTI.

1 Additionally, on the date of her arrest, Detective Shaw was looking for Ms.
2 Gonzalez at a motel on North First Street in Yakima, Washington; a place known
3 to the police as a hub for criminal activity.

4 Detective Shaw also testified that Ms. Gonzalez's conduct prior to and
5 during her arrest also raised concerns for officer safety. For example, as Detective
6 Shaw was walking up to make initial contact with Ms. Gonzalez, he noticed her
7 trying to gain entry into the motel lobby by using a key card. Detective Shaw
8 noticed Ms. Gonzalez's hands were shaking uncontrollably to the point where she
9 could not slide the access card into the key-slot.

10 During Detective Shaw's struggle to arrest Ms. Gonzalez, the purse fell off
11 her shoulder and hit the floor next to her feet and she blurted out, "that's not my
12 purse." And at some point during the struggle, Ms. Gonzalez broke free from
13 Detective Shaw's control and reached for her purse. This caused Detective Shaw
14 to become extremely concerned for his safety, causing him to escalate his use of
15 force to gain control over Ms. Gonzalez.

16 Detective Shaw also became concerned over the fact that Ms. Gonzalez
17 urinated on herself. Detective Shaw testified that, in his experience, he finds that
18 people urinate on themselves in two situations: (1) when someone is so intoxicated
19 that they cannot control themselves; or (2) when they are arrested for a very
20 serious crime. There being no facts to suggest intoxication, Detective Shaw
21 concluded Ms. Gonzalez urinated on herself because she knew or assumed she
22 was being arrested for a serious offense.

23 Finally, Detective Shaw testified that at the time of the arrest or shortly
24 after, a bystander walked by and made a comment to Ms. Gonzalez which
25 suggested that the two were acquainted with one another. This also raised safety
26 concerns for Detective Shaw.

27 Second, the Government also argues that the search was justified because it
28 was conducted to preserve destructible evidence. Detective Shaw arrested Ms.

1 Gonzalez pursuant to an outstanding felony warrant issued for unlawful
2 possession of methamphetamine. ECF No. 101-1. Thus, Detective Shaw had
3 reason to believe there may be destructible evidence inside Ms. Gonzalez's purse.

4 The Court finds that the facts and circumstances surrounding Ms.
5 Gonzalez's arrest demonstrate that Detective Shaw conducted a valid search
6 incident to arrest. Detective Shaw offered numerous, compelling reasons to search
7 the purse on the basis of officer safety. The fact that Ms. Gonzalez was handcuffed
8 at the time of the search is significant, but not dispositive. *Cook*, 808 F.3d at 1200.
9 Moreover, the Court takes note of the fact that Detective Shaw arrested Ms.
10 Gonzalez in an area known for its criminal activity, and that there was at least one
11 bystander in the area who appeared to know Ms. Gonzalez. See *Cook*, 808 F.3d at
12 1200 (crediting officer safety concerns because at the time of the arrest, "a crowd
13 had gathered nearby, heighten[ing] the agents' reasonable fear that a bystander or
14 additional unidentified co-conspirator might intervene."). Under the totality of the
15 circumstances, the Court finds that the search of Ms. Gonzalez's purse was
16 reasonable and a valid search incident to arrest.

17 **Inevitable Discovery**

18 Even if the search of Ms. Gonzalez's purse was not a valid search incident
19 to arrest, the evidence found inside the purse remains admissible pursuant to the
20 inevitable discovery doctrine. The inevitable discovery doctrine is an exception to
21 the exclusionary rule. *Nix v. Williams*, 467 U.S. 431, 443-44 (1984). "For the
22 exception to apply, the prosecution must show by a preponderance of the evidence
23 that the contraband or other material seized would have been discovered inevitably
24 by lawful means." *U.S. v Andrade*, 784 F.2d 1431, 1433 (9th Cir. 1986) (citing
25 *Nix*, 467 U.S. at 444). The inevitable discovery doctrine applies to evidence that
26 would have been discovered pursuant to an inventory search. *U.S. v. Ruckes*, 586
27 F.3d 713, 718-19 (9th Cir. 2009).

1 An inventory search is a well-defined exception to the warrant requirement
2 of the Fourth Amendment. *Colorado v. Bertine*, 479 U.S. 367, 371 (1987) “[I]t is
3 not ‘unreasonable’ for police, as part of the routine procedure incident to
4 incarcerating an arrested person, to search any container or article in [her]
5 possession, in accordance with established inventory procedures.” *Illinois v.*
6 *Lafayette*, 462 U.S. 640, 648 (1883). “[I]nventory procedures serve to protect an
7 owner’s property while it is in the custody of the police, to insure against claims of
8 lost, stolen, or vandalized property, and to guard the police from danger.” *Bertine*,
9 586 F.3d at 371-72.

10 The Government contends that even if Detective Shaw had not searched Ms.
11 Gonzalez’s purse following her arrest, its contents would have been discovered
12 inevitably during an inventory search. Detective Shaw testified that generally
13 when an individual possesses a piece of property at the time of her arrest, the
14 property is taken with her to jail at the time of booking. Some jails will not accept
15 large property – like a suitcase or large purse – in which case the property is
16 booked into the Yakima Police Evidence and Property Unit. Detective Shaw
17 testified that it is standard practice and procedure at the Yakima Police
18 Department to search and inventory property before it is booked in to the Evidence
19 and Property Unit for safekeeping.

20 Ms. Gonzalez does not dispute that, if she was booked, her purse would
21 have been subject to an inventory search. Instead, Ms. Gonzalez argues that, under
22 Washington law, she could have posted bail and avoided the booking process and
23 any corresponding inventory search. Wash. Rev. Code § 10.31.030 provides that
24 when someone is arrested under the authority of a warrant, the arresting officer
25 must provide the arrestee with notice of the charge and the amount of bail set by
26 the warrant. Wash. Rev. Code § 10.31.030; *United States v. Peterson*, 902 F.3d
27 1016, 1020 (9th Cir. 2018). “[A]ny officer making an arrest under this section
28 shall, if the person arrested wishes to deposit bail, take such person directly and

1 without delay before a judge or before an officer authorized to take the
2 recognizance and justify and approve the bail, including the deposit of a sum of
3 money equal to bail.” Wash. Rev. Code § 10.31.030. An inventory search
4 conducted before an arrestee is provided the information required by § 10.31.030
5 is unlawful. *State v. Smith*, 56 Wash. App. 145, 98 (1989).

6 In this case, the outstanding felony warrant issued for Ms. Gonzalez’s arrest
7 indicates that bail was set at \$5,000.00. ECF No. 101-1. Ms. Gonzalez contends
8 that, had she been told about her right to post bail, she would have done so and
9 avoided the booking and inventory search process altogether.

10 The Court finds that even if Detective Shaw failed to comply with the
11 requirements of § 10.31.030, Ms. Gonzalez’s purse would have been subject to an
12 inventory search had she been booked on charges resisting arrest. *Peterson*, 902
13 F.3d at 1020. Detective Shaw testified that, based on the fact that he developed
14 probable cause to arrest Ms. Gonzalez for four additional felony charges related to
15 the contraband and drugs found inside of her purse, he decided not to cite her for
16 resisting arrest. However, had he not searched the purse incident to Ms.
17 Gonzalez’s arrest and, therefore, not discovered the contraband and narcotics, he
18 would have arrested Ms. Gonzalez for resisting arrest. If Detective Shaw would
19 have arrested Ms. Gonzalez for resisting arrest, bail would not have been set on
20 that charge at the time of her arrest. Under these circumstances, Ms. Gonzalez
21 would have been booked and her purse inventoried at the Yakima Police
22 Department Evidence and Property Unit. Thus, the evidence inside of Ms.
23 Gonzalez’s purse inevitably would have been discovered.

24 CONCLUSION

25 The contraband and narcotics found inside of Ms. Gonzalez’s purse were
26 discovered pursuant to a valid search incident to arrest. And even if the search was
27 not valid, the evidence would have been discovered inevitably pursuant to an
28

ORDER RE: PRETRIAL MOTI'

1 inventory search. Thus, Ms. Gonzalez's Motion to Suppress Evidence, ECF No.
2 92, is **denied**.

3 **IT IS HEREBY ORDERED:**

4 1. Defendant's Motion to Dismiss, ECF No. 91, is **DENIED**.
5 2. Defendant's Motion to Suppress Evidence, ECF No. 92, is **DENIED**.
6 3. The Government's Second Motion to Extend Time to File Response,
7 ECF No. 98, is **GRANTED**.
8 4. The Government's Motion to Expedite, ECF No. 99, is **DENIED as**
9 **moot**.

10 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
11 enter this Order and furnish copies to counsel.

12 **DATED** this 22nd day of January 2019.



17 Stanley A. Bastian

19 Stanley A. Bastian
20 United States District Judge

21
22
23
24
25
26
27
28
ORDER RE: PRETRIAL MOTION...

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOV 4 2021

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIA ANDREA GONZALEZ,

Defendant-Appellant.

No. 19-30273

D.C. No.

1:18-cr-02005-SAB-1

Eastern District of Washington,
Yakima

ORDER

Before: HAWKINS, TASHIMA, and McKEOWN, Circuit Judges.

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

Judge McKeown has voted to deny the petition for rehearing en banc and Judges Hawkins and Tashima so recommend. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellant's petition for panel rehearing and petition for rehearing en banc are denied.

RELEVANT STATUTORY PROVISIONS

Title 18, United States Code, Section 3161 states:

§ 3161. Time limits and exclusions

- (a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.
- (b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.
- (c)(1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within seventy days from the date of such consent.
(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.
- (d)(1) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.
(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within

seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter, the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to--

- (A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;
- (B) delay resulting from trial with respect to other charges against the defendant;
- (C) delay resulting from any interlocutory appeal;
- (D) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;
- (E) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;
- (F) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;
- (G) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and
- (H) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

- (2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.
- (3)(A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

- (B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(6) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(7)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(8) Any period of delay, not to exceed one year, ordered by a district court upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in section 3292 of this title, has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

(j)(1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly--

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

(k)(1) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs more than 21 days after the day set for trial, the defendant shall be deemed to have first appeared before a judicial officer of the court in which the information or indictment is pending within the meaning of subsection (c) on the date of the defendant's subsequent appearance before the court.

(2) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs not more than 21 days after the day set for trial, the time limit required by subsection (c), as extended by subsection (h), shall be further extended by 21 days.

18 U.S.C. § 3161.

Title 18, United States Code, Section 3162 states:

§ 3162. Sanctions

(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprocsecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprocsecution on the

administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

- (A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;
- (B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;
- (C) by imposing on any attorney for the Government a fine of not to exceed \$250;
- (D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or
- (E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

18 U.S.C. § 3162.

1 JOSEPH H. HARRINGTON
2 United States Attorney
3 Eastern District of Washington
4 Ian L. Garriques
5 Assistant United States Attorney
6 402 E. Yakima Ave., Ste. 210
7 Yakima, WA 98901-2760
8 Tel. (509) 454-4425

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
JAN 17 2018
SEAN E. McAVOY, CLERK
YAKIMA, WASHINGTON DEPUTY

6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

} No. 1:18-CR-2005-SAB

9 Plaintiff,

} INDICTMENT

10 v.

11 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii) –
12 Possession with Intent to Distribute 50
Grams or More of Actual
Methamphetamine (Count 1)

13 MARIA ANDREA GONZALEZ,

14 } 18 U.S.C. § 924(c)(1)(A) –
15 Defendant. } Possession of Firearm in Furtherance of
16 } Drug Trafficking Crime (Count 2)

17 } 18 U.S.C. § 922(g)(1) – Felon in
18 } Possession of Firearm and Ammunition
19 } (Count 3)

20 } Notice of Criminal Forfeiture

21 The Grand Jury charges that:

22 COUNT 1

23 On or about November 21, 2017, in the Eastern District of Washington, the
24 Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess
25 with intent to distribute 50 grams or more of actual methamphetamine, a Schedule II
26 controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii).

27 COUNT 2

28 On or about November 21, 2017, in the Eastern District of Washington, the
29 Defendant, MARIA ANDREA GONZALEZ, did knowingly possess a firearm, to wit: a
30 North American Arms, Model NAA-22LR, .22LR caliber revolver, bearing serial
31 number L113635, in furtherance of a drug trafficking crime for which she may be

1 prosecuted in a court of the United States, to wit: Possession with Intent to Distribute 50
 2 Grams or More of Actual Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1),
 3 (b)(1)(A)(viii); all in violation of 18 U.S.C. § 924(c)(1)(A).

4 COUNT 3

5 On or about November 21, 2017, in the Eastern District of Washington, the
 6 Defendant, MARIA ANDREA GONZALEZ, who had previously been convicted of a
 7 crime punishable by a term of imprisonment exceeding one year, did knowingly possess,
 8 in and affecting interstate commerce, a firearm and ammunition, to wit: a North
 9 American Arms, Model NAA-22LR, .22LR caliber revolver, bearing serial number
 10 L113635, and 4 rounds of Cascade Cartridge Inc. (CCI), .22LR caliber ammunition
 11 bearing headstamp C, which had theretofore been shipped and transported in interstate
 12 and foreign commerce, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2).

13 NOTICE OF CRIMINAL FORFEITURE

14 The allegations contained in this Indictment are hereby realleged and incorporated
 15 by reference for the purpose of alleging forfeitures pursuant to 21 U.S.C. § 853, 18
 16 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

17 Pursuant to 21 U.S.C. § 853, upon conviction of an offense in violation of 21
 18 U.S.C. § 841(a)(1), as set forth in Count 1 of this Indictment, the Defendant, MARIA
 19 ANDREA GONZALEZ, shall forfeit to the United States of America, any property
 20 constituting, or derived from, any proceeds obtained, directly or indirectly, as the result
 21 of such offense(s) and any property used or intended to be used, in any manner or part,
 22 to commit or to facilitate the commission of the offense(s). The assets to be forfeited
 23 include, but are not limited to: a North American Arms, Model NAA-22LR, .22LR
 24 caliber revolver, bearing serial number L113635; and, 4 rounds of Cascade Cartridge
 25 Inc. (CCI), .22LR caliber ammunition bearing headstamp C.

26 If any forfeitable property, as a result of any act or omission of the Defendant:
 27 (a) cannot be located upon the exercise of due diligence;
 28 (b) has been transferred or sold to, or deposited with, a third party;

1 (c) has been placed beyond the jurisdiction of the court;
2 (d) has been substantially diminished in value; or
3 (e) has been commingled with other property which cannot be divided without
4 difficulty;
5 the United States of America shall be entitled to forfeiture of substitute property
6 pursuant to 21 U.S.C. § 853(p).

7 Upon conviction of an offense in violation of 18 U.S.C. §§ 924(c)(1)(A) or
8 922(g)(1), as set forth in Counts 2 and 3 of this Indictment, the Defendant, MARIA
9 ANDREA GONZALEZ, shall forfeit to the United States, pursuant to 18 U.S.C. §
10 924(d) and 28 U.S.C. § 2461(c), any firearms and ammunition involved in the
11 commission of the offense, including, but not limited to: a North American Arms,
12 Model NAA-22LR, .22LR caliber revolver, bearing serial number L113635; and, 4
13 rounds of Cascade Cartridge Inc. (CCI), .22LR caliber ammunition bearing headstamp
14 C.

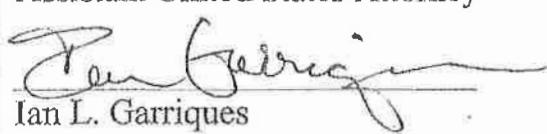
15 DATED this 17th day of January, 2018.

16 A TRUE BILL

17 _____
18 Presiding Juror

19 JOSEPH H. HARRINGTON
20 United States Attorney

21 
22 Thomas J. Hanlon

23 
24 Ian L. Garriques

25 Assistant United States Attorney

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

1
2 Jan 24, 2018
3
4
5
6
7
8
9
10
11

SEAN F. McAVOY, CLERK

5 UNITED STATES DISTRICT COURT

6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

No. 1:18-CR-2005-SAB-1

8 Plaintiff,

9 vs.
10
11 ORDER FOLLOWING INITIAL
12
13 APPEARANCE AND
14 ARRAIGNMENT

15 MARIA ANDREA GONZALEZ,

ACTION REQUIRED

16 Defendant.

17
18 On Wednesday, January 24, 2018, Defendant made her initial appearance
19 and was arraigned based on the Indictment (ECF No. 1). Defendant appeared, in
20 custody, with her attorney Michael Lynch. Assistant United States Attorney
21 Megan McCalla represented the United States.

22
23 Defendant was advised of, and acknowledged the charges against her and
24 the penalties she faces.

25
26 Defendant was advised of, and acknowledged Defendant's rights.

27
28 Defendant pled not guilty.

29
30
31 ORDER FOLLOWING INITIAL APPEARANCE AND ARRAIGNMENT

1 A member of the Criminal Justice Act Panel was appointed to represent the
2 Defendant.

3 The United States moved for detention (ECF No. 11). A supplemental
4 pretrial services report was ordered and a detention hearing was set before **Judge**
5 **Dimke in Yakima, Washington, on Friday, January 26, 2018, at 10:00 AM.**

6 The Court directs the parties to review the Local Criminal Rules governing
7 discovery and other issues in this case. <http://www.waed.uscourts.gov/court->
8 [info/local-rules-and-orders/general-orders.](http://www.waed.uscourts.gov/court-)

9 Until further order of this Court, Defendant shall be committed to the
10 custody of the Attorney General for confinement in a corrections facility separate,
11 to the extent practicable, from persons awaiting or serving sentences or being held
12 in custody pending appeal. Defendant shall be afforded reasonable opportunity for
13 private consultation with counsel. On order of a court of the United States or on
14 request of an attorney for the United States, the person in charge of the corrections
15 facility in which Defendant is confined shall deliver Defendant to a United States
16 Marshal for the purpose of an appearance in connection with a court proceeding.

17 DATED this January 24, 2018.

18 s/Mary K. Dimke
19 MARY K. DIMKE
20 UNITED STATES MAGISTRATE JUDGE

ORDER FOLLOWING INITIAL APPEARANCE AND ARRAIGNMENT.

1 JOSEPH H. HARRINGTON
2 United States Attorney
3 Eastern District of Washington
4 Ian L. Garriques
5 Assistant United States Attorney
6 402 E. Yakima Ave., Ste. 210
7 Yakima, WA 98901-2760

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAR 13 2017
GEAN F. MCADY, CLERK
YAKIMA, WASHINGTON DEPUTY

5 UNITED STATES DISTRICT COURT
6 FOR THE EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 MARIA ANDREA GONZALEZ,

11 Defendant.

12 } No. 1:18-CR-2005-SAB
13 } SUPERSEDING INDICTMENT
14 } 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii) –
15 } Possession with Intent to Distribute 50
16 } Grams or More of Actual
17 } Methamphetamine (Count 1)
18 } 21 U.S.C. § 841(a)(1), (b)(1)(B)(i) –
19 } Possession with Intent to Distribute 100
20 } Grams or More of a Mixture and
21 } Substance Containing a Detectable
22 } Amount of Heroin (Count 2)
23 } 18 U.S.C. § 924(c)(1)(A) –
24 } Possession of Firearm in Furtherance of
25 } Drug Trafficking Crime (Count 3)
26 } 18 U.S.C. § 922(g)(1) – Felon in
27 } Possession of Firearm and Ammunition
28 } (Count 4)
29 } 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii) –
30 } Possession with Intent to Distribute
31 } 5 Grams or More of Actual
32 } Methamphetamine (Count 5)
33 } 21 U.S.C. § 841(a)(1), (b)(1)(C) –
34 } Possession with Intent to Distribute a
35 } Mixture and Substance Containing a
36 } Detectable Amount of Heroin (Count 6)
37 } Notice of Criminal Forfeiture

38 The Grand Jury charges that:

39 COUNT 1

40 On or about November 21, 2017, in the Eastern District of Washington, the
41 Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess
42 with intent to distribute 50 grams or more of actual methamphetamine, a Schedule II

1 controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii).

2 COUNT 2

3 On or about November 21, 2017, in the Eastern District of Washington, the
4 Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess
5 with intent to distribute 100 grams or more of a mixture and substance containing a
6 detectable amount of heroin, a Schedule I controlled substance, in violation of 21 U.S.C.
7 §§ 841(a)(1), (b)(1)(B)(i).

8 COUNT 3

9 On or about November 21, 2017, in the Eastern District of Washington, the
10 Defendant, MARIA ANDREA GONZALEZ, did knowingly possess a firearm, to wit: a
11 North American Arms, Model NAA-22LR, .22LR caliber revolver, bearing serial
12 number L113635, in furtherance of a drug trafficking crime for which she may be
13 prosecuted in a court of the United States, to wit: Possession with Intent to Distribute 50
14 Grams or More of Actual Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1),
15 (b)(1)(A)(viii); and Possession with Intent to Distribute 100 Grams or More of a Mixture
16 and Substance Containing a Detectable Amount of Heroin, in violation of 21 U.S.C.
17 §§ 841(a)(1), (b)(1)(B)(i); all in violation of 18 U.S.C. § 924(c)(1)(A).

18 COUNT 4

19 On or about November 21, 2017, in the Eastern District of Washington, the
20 Defendant, MARIA ANDREA GONZALEZ, who had previously been convicted of a
21 crime punishable by a term of imprisonment exceeding one year, did knowingly possess,
22 in and affecting interstate commerce, a firearm and ammunition, to wit: a North
23 American Arms, Model NAA-22LR, .22LR caliber revolver, bearing serial number
24 L113635, and 4 rounds of Cascade Cartridge Inc. (CCI), .22LR caliber ammunition
25 bearing headstamp C, which had theretofore been shipped and transported in interstate
26 and foreign commerce, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2).

27 COUNT 5

28 On or about January 22, 2018, in the Eastern District of Washington, the

1 Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess
2 with intent to distribute 5 grams or more of actual methamphetamine, a Schedule II
3 controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(viii).

4 COUNT 6

5 On or about January 22, 2018, in the Eastern District of Washington, the
6 Defendant, MARIA ANDREA GONZALEZ, did knowingly and intentionally possess
7 with intent to distribute a mixture and substance containing a detectable amount of
8 heroin, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 841(a)(1),
9 (b)(1)(C).

10 NOTICE OF CRIMINAL FORFEITURE

11 The allegations contained in this Superseding Indictment are hereby realleged and
12 incorporated by reference for the purpose of alleging forfeitures pursuant to 21 U.S.C.
13 § 853, 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

14 Pursuant to 21 U.S.C. § 853, upon conviction of an offense in violation of 21
15 U.S.C. § 841(a)(1), as set forth in Counts 1, 2, 5, and 6 of this Superseding Indictment,
16 the Defendant, MARIA ANDREA GONZALEZ, shall forfeit to the United States of
17 America, any property constituting, or derived from, any proceeds obtained, directly or
18 indirectly, as the result of such offense(s) and any property used or intended to be used,
19 in any manner or part, to commit or to facilitate the commission of the offense(s). The
20 assets to be forfeited include, but are not limited to: \$903.00 in United States currency;
21 a North American Arms, Model NAA-22LR, .22LR caliber revolver, bearing serial
22 number L113635; and, 4 rounds of Cascade Cartridge Inc. (CCI), .22LR caliber
23 ammunition bearing headstamp C.

24 If any forfeitable property, as a result of any act or omission of the Defendant:

25 (a) cannot be located upon the exercise of due diligence;
26 (b) has been transferred or sold to, or deposited with, a third party;
27 (c) has been placed beyond the jurisdiction of the court;
28 (d) has been substantially diminished in value; or

1 (e) has been commingled with other property which cannot be divided without
2 difficulty;

3 the United States of America shall be entitled to forfeiture of substitute property
4 pursuant to 21 U.S.C. § 853(p).

5 Upon conviction of an offense in violation of 18 U.S.C. §§ 924(c)(1)(A) or
6 922(g)(1), as set forth in Counts 3 and 4 of this Superseding Indictment, the Defendant,
7 MARIA ANDREA GONZALEZ, shall forfeit to the United States, pursuant to 18
8 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), any firearms and ammunition involved in the
9 commission of the offense, including, but not limited to: a North American Arms,
10 Model NAA-22LR, .22LR caliber revolver, bearing serial number L113635; and, 4
11 rounds of Cascade Cartridge Inc. (CCI), .22LR caliber ammunition bearing headstamp
12 C.

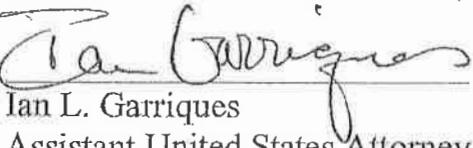
13 DATED this 13th day of March, 2018.

14 A TRUE BILL

15 _____
16 Presiding Juror

17 JOSEPH H. HARRINGTON
18 United States Attorney

19 
20 Thomas J. Hanlon
21 Assistant United States Attorney

22 
23 Ian L. Garriques
24 Assistant United States Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 16, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 1:18-CR-2005-SAB-1

Plaintiff,

ORDER FOLLOWING
ARRAIGNMENT ON
SUPERSEDING INDICTMENT

vs.

MARIA ANDREA GONZALEZ,

Defendant.

On Friday, March 16, 2018, Defendant was arraigned on the Superseding Indictment (ECF No. 38). Defendant appeared, in custody, with her attorney Michael Lynch. Assistant United States Attorney Benjamin Seal represented the United States.

Defendant was advised of, and acknowledged the charges against her and the penalties she faces.

Defendant was advised of, and acknowledged Defendant's rights.

Defendant pled not guilty.

ORDER FOLLOWING ARRAIGNMENT ON SUPERSEDING INDICTMENT-
40

The Court appointed counsel to represent Defendant (ECF No. 9) and addressed detention (ECF Nos. 20, 26) in previous orders.

Defendant is bound over to Judge Stanley A. Bastian for further proceedings.

The Court directs the parties to review the Local Criminal Rules governing discovery and other issues in this case. <http://www.waed.uscourts.gov/court-info/local-rules-and-orders/general-orders>.

DATED this March 16, 2018.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES MAGISTRATE JUDGE

1
2 MICHAEL W. LYNCH
3 Attorney for Defendant
4 24 N. 2nd St.
5 Yakima, WA 98901
6 (509)575-8961
7
8

9
10
11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON
13

14 UNITED STATES OF AMERICA,)
15 Plaintiff,) No.: 18-CR-2005-SAB-1
16 vs.)
17 MARIA ANDREA GONZALEZ,) MOTION FOR CONTINUANCE OF
18 Defendant) PRETRIAL AND TRIAL
19) HEARING ON 3/21/18 @ 11:00 A.M.
20) With Oral Argument
21)
22)
23)
24)
25)

14 COMES NOW the defendant, through counsel, and moves the Court for an
15 order continuing the trial date of April 4, 2018. Defendant also moves to extend the
16 time for filing pretrial motions; and continuing the pretrial hearing.
17
18 I. AUTHORITIES.
19
20 This motion is based on 18 U.S.C. §3161(h)(7)(A) and (B)(iv). 18 U.S.C.
21 §3161(h)(7)(B)(iv) provides:
22
23 (B) The factors, among others, which a judge shall consider in
24 determining whether to grant a continuance under subparagraph (A) of
25 this paragraph in any case are as follows:

MOTION FOR CONTINUANCE OF TRIAL

MICHAEL W. LYNCH, P.S.
ATTORNEY AT LAW
24 N. 2ND ST.
YAKIMA, WA 98901
(509) 575-8961

1
2 (iv) Whether the failure to grant such a continuance in a case which,
3 taken as a whole, is not so unusual or so complex as to fall within clause
4 (ii), would deny the defendant reasonable time to obtain counsel, would
5 unreasonably deny the defendant or the Government continuity of
6 counsel, or would deny counsel for the defendant or the attorney for the
7 Government the reasonable time necessary for effective preparation,
8 taking into account the exercise of due diligence.
9

10
11
12 II. FACTUAL BASIS.
13

14 Defendant was indicted 1/17/18 on the following charges: 1) possession with
15 intent to distribute 50 grams or more of actual methamphetamine; 2) possession of a
16 firearm in furtherance of a drug trafficking crime; and 3) felon in possession of
17 firearm and ammunition. She was arraigned on January 24, 2018 (ECF 5) and a
18 notice under 21 U.S.C. §851 notice was filed the same day. ECF 10. A superseding
19 indictment was filed March 13, 2018, on the following counts: 1) possession with
20 intent to distribute 50 grams or more of actual methamphetamine; 2) possession with
21 intent to distribute 100 grams or more of heroin; 3) possession of a firearm in
22 furtherance of a drug trafficking crime; 4) felon in possession of a firearm and
23 ammunition; 5) possession with intent to distribute 5 grams or more of actual
24
25

MOTION FOR CONTINUANCE OF TRIAL

MICHAEL W. LYNCH, P.S.
ATTORNEY AT LAW
24 N. 2ND ST.
YAKIMA, WA 98901
(509) 575-8961

1 methamphetamine; and 6) possession with intent to distribute heroin. ECF 38. The
2 counts relate to conduct occurring on November 21, 2017 in January 22, 2018.
3

4 In meetings to discuss the case the defendant was resistive to joint review of
5 the discovery, and to substantive discussions with counsel, focusing instead on
6 detention review hearings and insisting on her own copy of discovery. A motion to
7 disclose discovery to the defendant was filed on 2/26/18. ECF 27. This motion was
8 heard and denied on March 7, 2018. ECF 32. Defense counsel was next able to
9 meet with the defendant on March 13, 2018, and review discovery and discuss the
10 case. At that time, areas of inquiry for a defense came into focus. Counsel met
11 with Gary King, defense investigator, on 3/14/18. Mr. King will expedite his efforts,
12 but will be unavailable from 3/24/18 to 4/20/18.
13
14

15 Additional discovery in support of the superseding indictment was received on
16 March 14, 2018. As noted in defendant's motion in limine (ECF 36) the discovery
17 received to date includes a large number of phone records and "ping" locations. The
18 additional discovery includes extraction data from an iPhone.
19

20 Counsel discussed with the defendant the status of the case and the need for
21 additional pre-trial preparation. The defendant disagrees with the motion.
22

23 AUSA Ian Garriques has advised the undersigned that he does not oppose the
24 motion, so long as the deadline for pretrial motions are also continued.
25

III. ARGUMENT.

MOTION FOR CONTINUANCE OF TRIAL

MICHAEL W. LYNCH, P.S.
ATTORNEY AT LAW
24 N. 2ND ST.
YAKIMA, WA 98901
(509) 575-8961

1 Adequate pre-trial preparation has been delayed due to circumstances beyond
2 defense counsel's control. The defendant faces a life sentence if convicted.
3 Defendant's refusal to discuss her case hindered preparation. A superseding
4 indictment has been recently filed. A defense investigation is now underway.
5 Additional discovery has been received.

7 IV. CONCLUSION.

9 Additional time is needed to prepare for trial, and for pretrial. Counsel
10 requests a trial continuance, and extension of the motions practice deadline.

12 DATED: 3/16/18

13 /S/ MICHAEL W. LYNCH
14 MICHAEL W. LYNCH, WSBA 6820
15 Attorney for Defendant

16 MOTION FOR CONTINUANCE OF TRIAL -

17 MICHAEL W. LYNCH, P.S.
18 ATTORNEY AT LAW
19 24 N. 2ND ST.
20 YAKIMA, WA 98901
21 (509) 575-8961

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
Plaintiff,) NO. 1:18-2005-SAB-1
-vs-)
MARIA ANDREA GONZALEZ,) March 21, 2018
Defendant.) Yakima, Washington

VERBATIM REPORT OF PROCEEDINGS
MOTION HEARING

BEFORE THE HONORABLE STANLEY A. BASTIAN
UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 FOR THE PLAINTIFF: IAN L. GARRIQUES
15 Assistant United States
16 Attorneys 402 E. Yakima Ave. #210
Yakima, WA 98901

17 FOR THE DEFENDANT: MICHAEL W. LYNCH
18 Attorney at Law
24 N. Second St.
Yakima, WA 98901

20 REPORTED BY: Lynette Walters, RPR, CRR, CCR
21 Official Court Reporter
22 P. O. Box 845
Yakima, WA 98907
(509) 573-6613

24 Proceedings reported by mechanical stenography; transcript produced by computer-aided transcription.

1

INDEX

2

Page

3

Defendant's Motion to Continue Trial 3
Court's Ruling 18

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (MARCH 21, 2018, 11:14 A.M.)

2 THE CLERK: The matter now before the court is
3 United States of America versus Maria Andrea Gonzalez,
4 Case No. 1:18-CR-2005-SAB.

5 Counsel, please state your presence for the record.

6 MR. GARRIQUES: Good morning, Your Honor. Ian
7 Garriques for the United States.

8 MR. LYNCH: Mike Lynch for Ms. Gonzalez.

9 THE COURT: Good morning to both of you.

10 We have a number of motions. I think the real motion
11 that we need to talk about this morning is the motion to
12 continue filed by the defendant. Do you want to make a record
13 on that, Mr. Lynch?

14 MR. LYNCH: Good morning, Your Honor. Yes. I filed a
15 motion to continue. I should state at the outset that this is
16 opposed by Ms. Gonzales.

17 THE COURT: Thank you for clarifying that.

18 MR. LYNCH: Yes.

19 The primary reason for it, I think, is the inability
20 to adequately prepare, to, I think, some conflict between myself
21 and my client when it comes to significance of different aspects
22 of this case. My client's primary focus has been on obtaining
23 release from custody. We've had three detention hearings, as
24 Your Honor is aware. My client has recently requested another
25 detention hearing, including this morning. And I think that has

1 been her focus. And she has also, from the very beginning, been
2 interested in obtaining a copy of the discovery for herself,
3 which was disposed of as an issue when we appeared before the
4 court the last time.

5 Prior to that, my meetings with Ms. Gonzalez have been
6 difficult. I have not been able to get her to focus on what the
7 defense lawyer would typically do, which would be going over the
8 reports, the investigative reports, in detail, and discussing
9 different options with her in terms of what can be done with
10 this case.

11 My practice has always been, as a defense lawyer, when
12 dealing with criminal clients, criminally-charged clients, is
13 that I don't discuss plea bargains until we've gone over the
14 discovery. To me, it's bad practice. It doesn't put the
15 defense attorney in a good light. There is a sense among those
16 that I've represented that, if you do that, then you're working
17 for the government, and the relationship with the client is
18 damaged.

19 We were not able to go over the discovery, as I've
20 mentioned to the court, in detail until after the court ruled on
21 the motion to disclose. The next time I met with Ms. Gonzalez,
22 we were able to go over the discovery. At that point, my client
23 expressed areas of inquiry that she believes would be
24 significant to her defense.

25 I contacted the individual I have always used as a

1 defense investigator in this case, Gary King, who is an
2 excellent investigator, very diligent, very good at what he
3 does, and he immediately got to work to gather records that we
4 would need to present at trial in this case. In that regard,
5 I'm not commenting on the overall utility of those records in
6 terms of the defense, but this is what Ms. Gonzalez wants to
7 present, and, so, we are gathering that information.

8 Mr. King is available this week. I'm confident he's
9 working on it today, and traveling, no doubt, to obtain the
10 information. But he won't be available after the end of this
11 week for an extended period of time, I believe until April 20th.
12 So he's going to need some additional time.

13 We would certainly need him here for the trial itself,
14 so he could testify. And we would need to subpoena witnesses
15 from various locations, subpoena duces tecums for records, to
16 come and appear and testify, if needed. So all of this is going
17 to take time and effort.

18 In speaking to Ms. Gonzalez today, she was critical
19 that I had not done this from the outset, felt that I hadn't
20 done my job as an attorney. I'm explaining to the court today
21 why it was not possible. She is, therefore, opposed to the
22 motion to continue. We believe that it's necessary.

23 She has other interests as well. She wants me to
24 bring up to the court this morning that she would like the court
25 to consider releasing her from confinement. She's also been

1 interested in having this case remanded back to the state court,
2 where the charges were originally filed, at least prior to the
3 superseding indictment. I've explained to her that that's a
4 dubious proposal, but she's very interested in doing that as
5 well, and having me pursue that.

6 So that's where we are. I believe that, under the
7 circumstances, as defense counsel, I've done what I could do up
8 to this point to pursue this case and prepare it, given the
9 difficulties in communicating with my client, and that to
10 properly prepare this case for trial, as well as to explore
11 other options for my client which are not, I think, germane to
12 motion here today, a continuance is required.

13 THE COURT: Okay. Mr. Lynch, I appreciate your
14 explanation. I've got some questions for your client about the
15 continuance in just a minute. But before you step away, how
16 much time do you think you need, given everything that you've
17 explained.

18 And I'm just going to kind of add to the record a
19 little bit. It's my understanding that these charges were
20 initially filed in January, January 17th of this year, with
21 three charges, but there was a superseding indictment that took
22 place just last week in which three additional charges were
23 filed. And, so, this isn't the same case that it was two weeks
24 ago, when I last saw you and your client on the motion regarding
25 discovery. This case has changed.

1 So given everything you've said, and what I'm aware of
2 with the superseding indictment, how much time do you need to be
3 prepared for trial?

4 MR. LYNCH: We have received additional discovery,
5 Your Honor. I understand there is some additional discovery
6 that was made available yesterday that I haven't seen, and I
7 don't know how significant that is. I think probably it's
8 primarily recorded telephone calls from the jail by my client,
9 which joins many other recorded telephone calls that are part of
10 this case, and part of the motion in limine. I don't know that
11 that's a significant factor in terms of how much additional time
12 we would need.

13 But in terms of dealing with the evidence that
14 Mr. King is seeking and getting, and thinking about that and
15 reviewing the files, and determining relevance, and so forth, I
16 would think 45 to 60 days.

17 THE COURT: So 60 days from now we're at the mid part
18 of March, beyond the mid part of March. So that takes us into
19 the mid, kind of late part of May.

20 All right. What's the government's response to the
21 request for a trial continuance of 60 days? Actually, that
22 puts us into early June, because the trial date right now is
23 April 2nd.

24 MR. GARRIQUES: First of all, Your Honor, in terms of
25 dates, the government would be unavailable in mid June. If we

1 wanted to do it in late May, that might be possible.

2 THE COURT: Okay.

3 MR. GARRIQUES: Or the government would suggest
4 perhaps the last week of June. But mid June is not going to
5 work for the government.

6 THE COURT: Okay.

7 MR. GARRIQUES: In regards to the motion itself, the
8 government has no objection. The government believes, and has
9 set forth in its response, that there are valid grounds under
10 the Speedy Trial Act to exclude time from the 70 days from
11 arraignment through trial, based on the new charges filed, the
12 provision of additional discovery.

13 THE COURT: I appreciated those calculations you did.
14 I don't see that done very often. But that could be very
15 helpful if we get into a situation I don't think we're at yet.

16 MR. GARRIQUES: Correct, Your Honor. And that's just
17 for the fact that, when you file a motion, the time is
18 automatically excluded until it's ruled on. And the government
19 put that in there. And that actually adds, I calculated out,
20 about 30 or so days.

21 But regardless, even without getting into that, the
22 government believes that the grounds stated by Mr. Lynch warrant
23 a continuance, because he cannot prepare for trial at this point
24 if we proceeded on the current date, the unavailability of the
25 defense investigator, and the need for pretrial preparation.

1 THE COURT: As the case is currently situated, how
2 long do you think it would take to try the case?

3 MR. GARRIQUES: Government believes it would be a two-
4 to three-day trial. With government and defense case, perhaps
5 three days.

6 THE COURT: All right.

7 MR. GARRIQUES: I don't know if Mr. Lynch has a
8 different opinion.

9 THE COURT: I'll ask.

10 MR. GARRIQUES: And with that, the Act does allow the
11 court to continue the trial if the ends of justice, taking into
12 account the continuance, outweigh the best interests of the
13 public and the defendant in a speedy trial if the failure to
14 grant a continuance would deny counsel for defendant or the
15 government the reasonable time necessary for effective
16 preparation, taking into account the exercise of due diligence.
17 And the government would request that the court make that
18 specific finding on the record today or in its order, that there
19 would be a basis for that continuance under that --

20 THE COURT: What specific finding? I'm sorry.

21 MR. GARRIQUES: That the ends of justice -- it's under
22 3161(h)(7)(A) and (h)(7)(B)(iv), but that the ends of justice
23 served by taking such action, meaning excluding time from the
24 Speedy Trial Act outweigh the best interests of the public and
25 the defendant in a speedy trial because the failure to grant

1 such a continuance would deny counsel for defendant, in this
2 case, the reasonable time necessary for effective preparation,
3 taking into account the exercise of due diligence.

4 And there are a number of reasons in the Act, but
5 that's the one cited by the defense. And the government is also
6 in agreement that it sounds like that, with everything that's
7 been said, that Mr. Lynch cannot adequately prepare with the
8 currently set trial date.

9 THE COURT: Let me ask you a couple -- I didn't mean
10 to interrupt you. Sounded like you were --

11 MR. GARRIQUES: Done.

12 THE COURT: -- done.

13 There's some comments that I just want to get your
14 thoughts on. The defendant is concerned about confinement. So
15 far, that has not been an issue that I've addressed; that's
16 something the magistrate judge has addressed. Has there been an
17 appeal filed from the magistrate's decision?

18 MR. GARRIQUES: No, Your Honor. It's been before the
19 magistrate.

20 THE COURT: Okay. And in terms of the request coming
21 from the defendant, her attorney mentioned it, there's no formal
22 motion, but what's the government's position, if any, in terms
23 of returning this case from federal court to state court?

24 MR. GARRIQUES: I've never heard of such a motion, or
25 any grounds that would support doing that. It's a federal

1 charge, independent of the state charges. They're separate. So
2 the government believes it would be moot and almost frivolous,
3 outright, to file something.

4 THE COURT: To bring it to federal court is a decision
5 of the U.S. Attorney, acting as a separate branch of government
6 from the court; is that right?

7 MR. GARRIQUES: They're an independent -- the state
8 can file its charges based on violations of state law, which
9 were previously charged by the state as part of this case, and
10 the federal government can add its corresponding charges that
11 can be filed. And they're separate sovereigns, so there's no
12 reason why the federal government can't pursue the charges.

13 THE COURT: But I was -- and I appreciate that, but I
14 was approaching it a little differently. The decision to file
15 the charges in federal court is a decision made by the federal
16 government, acting through the U.S. Attorney's Office?

17 MR. GARRIQUES: Yes.

18 THE COURT: All right. Thank you.

19 MR. GARRIQUES: Yes, that's correct.

20 THE COURT: Thank you.

21 All right. Ms. Gonzalez, if would you stand please.
22 You can stay where you are. But I have some questions for you.

23 Your attorney has explained that he needs more time to
24 prepare this case, and he's explained why he needs more time.
25 But he's also told me that you disagree with that request. Is

1 that correct?

2 THE DEFENDANT: I do.

3 THE COURT: You currently have a trial date two weeks
4 from now, April 2nd. This case was initially filed in January
5 2018. But just last week the government has added additional
6 charges by filing a superseding indictment. It's my
7 understanding you've already seen the magistrate judge on that,
8 and you've been -- you've gone through the preliminary
9 appearance procedure about that.

10 Do you understand, though, that these are very serious
11 charges, that if you're convicted, it could lead to a
12 significant period of time in a federal prison for you? Do you
13 understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: It's been represented to me, and I don't
16 know this to be the case, I don't know what the government is
17 going to ask if you're convicted, but it's been represented to
18 me that you may be facing life in prison if you're convicted of
19 some of these criminal charges. Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Now, you're entitled to have an attorney
22 of your choice represent you, or to have an attorney appointed
23 for you. You have an appointed attorney, Mr. Lynch. And he's a
24 very good attorney. But he can only do his job if he is given
25 the time necessary to prepare. Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. And you still object to his
3 request for a continuance?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you want to explain to me why you
6 object to that request?

7 THE DEFENDANT: Because I believe Mr. Lynch has had
8 the appropriate amount of time to get ready to fight my case.

9 THE COURT: All right. Why do you believe that he's
10 had the appropriate amount of time?

11 THE DEFENDANT: Because I've been sitting in jail for
12 four months, and since January he was put on my case.

13 THE COURT: All right.

14 THE DEFENDANT: From then until now, I believe it is
15 quite a lengthy period to get ready.

16 THE COURT: All right. Very good. You can have a
17 seat if you'd like. Thank you.

18 I'm going to grant the motion to continue for the
19 reasons requested. And I will use the language from the statute
20 that, Mr. Garriques, that you've suggested, but I will
21 paraphrase it here.

22 Your attorney needs time. He can only provide
23 effective assistance of counsel if he's given that time. He has
24 engaged a private investigator to help investigate some of the
25 facts that you've asked him to do. That investigator needs time

1 to do that investigation, and then Mr. Lynch needs time to
2 review it, and to decide how it fits into his strategy and
3 tactics for trial. And I would be not ensuring that you are
4 being represented effectively, and that your defense is not --
5 being given an appropriate chance if I were to force this case
6 to go to trial before it's ready, so I will grant that
7 continuance, finding there's good cause to do so.

8 So we will set this for a five-day trial in the late
9 May or early June time frame. Mr. Garriques, you said earlier
10 mid June wouldn't work for you?

11 MR. GARRIQUES: Either for myself or the case agent.

12 THE COURT: When you say early June, you mean the
13 first week?

14 MR. GARRIQUES: The government would be requesting the
15 week of May 28th, the day after Memorial Day, or the week
16 before, or, otherwise, the last week of June.

17 THE COURT: Okay. I would rather go to the May dates
18 right now, given the defendant's objections. So I want to take
19 those into account.

20 MR. GARRIQUES: Understood.

21 THE COURT: Mr. Lynch, what does your schedule look
22 like for that last part of May?

23 MR. LYNCH: It's clear, Your Honor.

24 THE COURT: Erin, what looks best for us?

25 THE CLERK: We have a pretrial date available on

1 May 23rd at 9:45, and then May 29th. It is the day after
2 Memorial Day.

3 THE COURT: For trial?

4 THE CLERK: For trial.

5 THE COURT: All right. All right. Does that seem to
6 meet your schedule, Mr. Garriques, and that of the case agent,
7 based on what you know right now?

8 MR. GARRIQUES: Yes, Your Honor.

9 THE COURT: Okay. Mr. Lynch?

10 MR. LYNCH: Sorry, Your Honor. What was the trial
11 date, again?

12 THE COURT: The trial date would be May 29th, which is
13 a Tuesday. It's the day after Memorial Day.

14 MR. LYNCH: That's fine, Your Honor.

15 THE COURT: And it sounds like four days should be
16 enough for this case, based on the predictions. But we can
17 always adjust that later --

18 MR. GARRIQUES: I believe so, Your Honor.

19 THE COURT: -- if we need to.

20 All right. We have some pending motions. I don't
21 know, do we need to deal with any of them now? Would it help in
22 trial preparation, or is it best to, to wait?

23 Mr. Garriques.

24 MR. GARRIQUES: Your Honor, the defense, Mr. Lynch,
25 had requested a new pretrial motions deadline, I believe, as

1 well. The government -- given the continuance, we discussed
2 delaying responses until later. I would suggest that any
3 responses be filed a week -- within the new pretrial motions
4 deadline.

5 THE COURT: We'll put some new deadlines in the
6 continuance order, which we'll get out later today. Those are
7 kind of automatically generated. I don't remember what they'll
8 be, but we'll have that.

9 MR. GARRIQUES: Yes, Your Honor.

10 THE COURT: We have a pretrial set for May 23rd, which
11 is a week before the trial starts. But if you think you need
12 either testimony or a lengthier pretrial hearing than typically
13 we have, just let us know, and we can have a pretrial a little
14 bit earlier. But we'll set it for the 23rd right now. All
15 right?

16 So I'm going to not rule on any of the pending
17 pretrial motions that have been filed. Is that all right,
18 Mr. Lynch?

19 MR. LYNCH: Yes, Your Honor.

20 THE COURT: All right. Ms. Gonzalez, I do want to
21 respond to two issues that your attorney brought to my
22 attention.

23 The first is confinement. You have been held in
24 pretrial detention, and you will be held unless that issue is
25 brought to me officially. And it has not yet been brought to me

1 officially. I will not change the orders. And I'm not trying
2 to say I'd change it either way. But that issue is not pending
3 right now before me.

4 In terms of the request to remove this case from
5 federal court to state court, that's not a decision I can make.
6 The U.S. Attorney decides which charges they want to pursue in
7 federal court, and they seek indictments from the grand jury,
8 and they've done that in this case. They've received an
9 indictment and a superseding indictment. And my job as a
10 federal judge is to monitor and preside over the case. But I
11 have no authority to dismiss the case and return it to state
12 court. So that motion -- it's not really a formal motion, but
13 that request that is brought to my attention today is denied.

14 Do you have any other questions this morning, because
15 we're at the end of the issues that we have teed up to talk
16 about?

17 THE DEFENDANT: No, Your Honor. Thank you.

18 THE COURT: All right. Mr. Lynch, anything else?

19 MR. LYNCH: No, Your Honor.

20 THE COURT: Mr. Garriques?

21 MR. GARRIQUES: Your Honor, if the case actually goes
22 to trial on May 29th, assuming it does, the government believes,
23 in past experience, it will be helpful to have a bit earlier of
24 a pretrial conference, in case any issues are resolved in terms
25 of evidence --

1 THE COURT: All right.

2 MR. GARRIQUES: -- allowing the parties to adjust. So
3 either setting an additional pretrial conference before the May
4 23rd --

5 THE COURT: I think it's probably better to set it
6 now, rather than wait. And let's keep the May 23rd, just
7 because it's good to check in with you just before trial starts
8 to make sure there's no additional issues.

9 But, Erin, Mr. Garriques has a good point. Let's have
10 an earlier pretrial. And I know that we're going to be in
11 Spokane on the week of the 15th, but we could do a pretrial by
12 video where I'm in Spokane, and --

13 MR. GARRIQUES: That would be fine with the
14 government.

15 THE COURT: -- the two of you are -- all right.
16 Erin?

17 THE CLERK: Okay. We can do that on May 17th at
18 1 p.m.

19 THE COURT: Mr. Lynch, does that --

20 MR. LYNCH: Yes, Your Honor, that's fine.

21 THE COURT: And you can do that here, and we'll have
22 it set up for video, because I'll be in Spokane. But it just
23 keeps the case progressing, in case there's any issues that
24 require some time before trial.

25 Does that work for you, Mr. Garriques?

1 MR. GARRIQUES: Yes, Your Honor.

2 THE CLERK: I also have a speedy trial waiver.

3 THE COURT: I don't think that the defendant is going
4 to file a speedy trial waiver, so I'm not going to --

5 THE CLERK: Are you willing to sign a speedy trial
6 waiver, Ms. Gonzalez?

7 THE DEFENDANT: I refuse.

8 THE COURT: All right. So I've ordered a continuance,
9 and I've excluded the time between April 2nd until May 29th over
10 the defendant's objections.

11 THE CLERK: Okay.

12 THE COURT: All right. Thank you.

13 THE DEFENDANT: Thank you, Your Honor.

14 MR. GARRIQUES: Thank you, Your Honor.

15 (ADJOURNMENT AT 11:37 A.M.)

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

2
3
4
5 I, LYNETTE WALTERS, Registered Professional Rep
6 Certified Realtime Reporter and Certified Court Reporter;

8 That the foregoing transcript, Pages 1 through 19,
9 contains a full, true, complete and accurate transcription of my
10 shorthand notes of all requested matters held in the foregoing
11 captioned case, including all objections and exceptions made by
12 counsel, rulings by the court, and any and all other matters
13 relevant to this case.

14 DATED this 14th day of January, 2020.

15

16

17

18

19

20

21

22

23

24

25

s/ Lynette Walters
LYNETTE WALTERS, RPR, CRR, CCR
CCR NO. 2230

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 22, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,
v.
MARIA ANDREA GONZALEZ,
Defendant.

No. 1:18-cr-02005-SAB

**ORDER GRANTING MOTION
TO CONTINUE**

The Court held a pretrial conference in this matter on March 21, 2018. Michael Lynch appeared on behalf of Defendant, who was present in the courtroom, and Ian Garriques appeared on behalf of the Government.

At the hearing, the Court addressed Defendant's Motion for Continuance of Pretrial and Trial, ECF No. 54. Defense counsel requests additional time to investigate and prepare an adequate defense on behalf of Defendant. The Government agrees with counsel that the circumstances of this case warrant a continuance. Ms. Gonzalez, however, disagrees with the motion.

For the reasons stated on the record, the Court grants Defendant's motion. The Court finds the ends of justice served by taking such action outweigh the interest of the public and the defendant in a speedy trial, and the failure to grant such a continuance would deny counsel for the defendant reasonable time necessary for effective preparation.

//

//

ORDER GRANTING MOTION TO CONTINUE

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Continuance of Pretrial and Trial, ECF No. 54, is

3 **GRANTED.**

4 2. The current trial date of April 2, 2018, is **STRICKEN** and **RESET** for
5 **May 29, 2018**, in **Yakima**, Washington. Counsel shall appear in court at 8:30 a.m.
6 on the first day of trial to address any pending pretrial matters. Jury selection shall
7 begin at 9:00 a.m.

8 3. A new pretrial conference is scheduled for **May 23, 2018** at **9:45 a.m.** in
9 **Yakima**, Washington.

10 4. A status conference by video is also scheduled for **May 17, 2018** at **1:00 p.m.** in **Yakima**, Washington.

12 5. Pursuant to 18 U.S.C. § 3161(h)(7)(A) and (h)(7)(B)(iv), the time between
13 April 2, 2018, the current trial date, until May 29, 2018, the new trial date, is
14 DECLARED EXCLUDABLE for purposes of computing time under the Speedy
15 Trial Act. The Court finds the ends of justice served by taking such action
16 outweigh the best interest of the public and the defendant in a speedy trial, and the
17 failure to grant such a continuance would deny counsel for the defendant
18 reasonable time necessary for effective preparation.

19 6. All pretrial motions shall be filed on or before **May 8, 2018**.

20 7. Trial briefs, proposed voir dire, jury instructions, verdict forms, exhibit
21 lists, expert witness lists, and summaries of expert testimony shall be filed and
22 served by all parties on or before **May 22, 2018**.

23 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
24 enter this Order and furnish copies to counsel.

25 **DATED** this 22nd day of March 2018.



27 A handwritten signature in black ink that appears to read "Stanley A. Bastian".

28 Stanley A. Bastian
United States District Judge

ORDER GRANTING MOTION TO CONTINUE

1 Troy J. Lee and Tim Nguyen
2 TROY LEE & ASSOCIATES
3 117 N. 3rd Street, Suite 201
Yakima, WA 98901
(509) 452-6235
4 Fax: (509) 452-2518

5 Attorneys for Defendant
6 MARIA ANDREA GONZALEZ

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 MARIA ANDREA GONZALEZ,

13 Defendant.

Case No.: 1:18-CR-2005-SAB-1

Defendant's Motion and
Memorandum in Support to
Continue Trial and Pretrial Dates

May 23, 2018 at 9:45 A.M., in
Yakima Federal District Court,
Room 203.

15 TO: JOSEPH HARRINGTON, UNITED STATES ATTORNEY
16 IAN GARRIQUES, ASSISTANT UNITED STATES ATTORNEY

17 **MOTION**

18 Troy J. Lee and Tim Nguyen, of TROY LEE & ASSOCIATES,
19 hereby moves this court for an order continuing the pretrial conference and
20 trial currently scheduled in the above-captioned matter.

22 **MEMORANDUM IN SUPPORT**

24 Trial in the above-captioned case is currently scheduled for pretrial
25 conference on May 23, 2018 at 9:45 a.m. and trial on May 29, 2018 at 9:00

DEFENDANT'S MOTION AND MEMORANDUM
TO CONTINUE

1 A.M. in Yakima, Washington. ECF No. 57. Counsel was appointed on this
2 case on April 2, 2018 after Ms. Gonzalez' previously appointed attorney
3 withdrew. ECF Nos. 63, 64, and 65. Ms. Gonzalez was indicted by means of
4 Second Superseding Indictment on April 10, 2018. ECF No. 66. The Second
5 Superseding Indictment, charges Ms. Gonzalez with six serious offenses,
6 some of which carry a mandatory life in prison sentence if convicted. ECF
7 No. 68.
8

10 On May 16, 2018, defense counsel received newly provided
11 discovery. The new discovery contains information related to Ms. Gonzalez'
12 Facebook account, search warrants and affidavits related to the Facebook
13 account, Spillman reports and Cellbrite reports and extractions from iPhone
14 A1428. The discovery is bates number 878-1159 and counsel has not been
15 afforded an opportunity to review the discovery.
16

18 Considering being recently appointed, the seriousness of the offense
19 and the new discovery, Counsel for Ms. Gonzalez requests that this Court
20 grant a continuance because additional time is necessary to provide counsel
21 with sufficient time to conduct investigation for a thorough and effective
22 defense.
23

1 Ms. Gonzalez has indicated that she previously objected to her
2 previous attorney's request for a continuance and Counsel believes that Ms.
3 Gonzalez will be objecting to current counsel's request for a continuance.
4 The request is for the Court grant a sixty (60) day continuance of both her
5 pretrial conference and trial. Should the Court grant this motion, defense
6 counsel respectfully requests the Court strike the currently scheduled pretrial
7 conference and trial date. If resolution is reached prior to that date, counsel
8 will note the matter on the calendar. Counsel has had an opportunity to
9 discuss this with the Government and there is no objection to this request.
10
11

12 In addition to continuing the pretrial conference and trial in this case,
13
14 Mr. Thompson also respectfully requests the Court to set a new deadline for
15 filing any pretrial motions in this case.
16
17

18 RESPECTFULLY SUBMITTED this 21st day of May, 2018.
19

20 s/ Troy J. Lee
21 Troy Lee, WSBA No. 30527
22 Attorney for Defendant
23 117 N. 3rd Street, Suite 201
24 Yakima, WA 98901
25 (509) 452-6235
 (509) 452-2518 fax
 troylee@troyleelaw.net

DEFENDANT'S MOTION AND MEMORANDUM
TO CONTINUE

s/ Tim Nguyen
Tim Nguyen, WSBA No. 50579
Attorney for Defendant
117 N. 3rd Street, Suite 201
Yakima, WA 98901
(509) 452-6235
(509) 452-2518 fax
timnguyen@troyleelaw.net

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEFENDANT'S MOTION AND MEMORANDUM
TO CONTINUE:

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
Plaintiff,) NO. 1:18-2005-SAB-1
-vs-)
MARIA ANDREA GONZALEZ,) May 23, 2018
Defendant.) Yakima, Washington

VERBATIM REPORT OF PROCEEDINGS
MOTION HEARING

BEFORE THE HONORABLE STANLEY A. BASTIAN
UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 FOR THE PLAINTIFF: IAN L. GARRIQUES
15 Assistant United States
16 Attorneys
402 E. Yakima Ave. #210
Yakima, WA 98901

17 FOR THE DEFENDANT: TROY J. LEE
18 TIM NGUYEN
19 Attorneys at Law.
117 N. Third St., #201
Yakima, WA 98901

21 REPORTED BY: Lynette Walters, RPR, CRR, CCR
22 Official Court Reporter
23 P. O. Box 845
Yakima, WA 98907
(509) 573-6613

25 Proceedings reported by mechanical stenography; transcript produced by computer-aided transcription.

1

INDEX

2

Page

3

Defendant's Motion to Continue Trial

4

Court's Ruling

9

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (MAY 23, 2018, 10:00 A.M.)

2 THE COURT: Are the parties ready to proceed?

3 MR. LEE: If I can have just one second. There was
4 some information that I wanted to pass on.

5 THE COURT: Okay.

6 (PAUSE)

7 THE CLERK: Are you ready?

8 MR. LEE: Yes. Thank you very much.

9 THE COURT: All right. Go ahead and call the case.

10 THE CLERK: The matter now before the court is the
11 United States of America versus Maria Andrea Gonzalez,
12 1:18-CR-2005-SAB.

13 Counsel, please state your presence for the record.

14 MR. GARRIQUES: Good morning, Your Honor. Ian
15 Garriques for the United States.

16 THE COURT: Good morning.

17 MR. LEE: And Troy Lee on behalf of Mr. Gonzalez -- or
18 Ms. Gonzalez. Good morning, Your Honor.

19 THE COURT: Welcome, Mr. Lee. Thanks for agreeing to
20 take this case over.

21 I understand there's somebody new here I don't think
22 I've ever met.

23 MR. NGUYEN: My name is Tim Nguyen. I'm the mentee
24 appointed to this case.

25 THE COURT: All right. Look forward to working with

1 you.

2 MR. NGUYEN: Thank you, Your Honor.

3 THE COURT: Mr. Garriques.

4 MR. GARRIQUES: Two matters for the court to consider
5 this morning. One is the defense motion to continue. Defense
6 sought a motion to continue based on the fact of new counsel,
7 discovery issues. The parties have looked at dates in mid
8 September or late September, which the government would have no
9 objection to.

10 Then there's another matter. Mr. Lynch previously
11 filed a motion for bail review. The government had responded,
12 and the court held it in abeyance while Mr. Lee was being
13 appointed. Mr. Lee noted today's date for further hearing
14 before this court on that matter.

15 I relayed some new information that the government
16 just received yesterday to Mr. Lee about five minutes ago, and
17 Mr. Lee was going to advise whether or not we wanted to proceed
18 today on arguing the bail issue, or at a later date, or not at
19 all.

20 THE COURT: Okay. I did want to verify. I also
21 received some new information late yesterday from the marshals'
22 office. I assume it's the same information about the incident
23 at the jail yesterday?

24 MR. GARRIQUES: Yes. My understanding is it was
25 approximately Monday night. We received the information

1 yesterday.

2 THE COURT: Okay. I received the information late
3 afternoon yesterday. I guess I just assumed it happened
4 yesterday, but thinking about it, I believe I was told it was
5 Monday night. Thank you for the correction.

6 MR. GARRIQUES: Yes, Your Honor.

7 THE COURT: Mr. Lee.

8 MR. LEE: I did speak to my client -- actually, can we
9 call her up?

10 THE COURT: Yes.

11 MR. LEE: So I did speak about that issue to
12 Ms. Gonzalez. And our intent today is to reserve that argument.
13 Obviously, I want a little bit more information. And I don't
14 exactly know, but I was kind of informed of that incident just a
15 couple minutes ago.

16 THE COURT: Okay. I certainly understand that
17 decision. You need a little time to digest it and figure out
18 how that plays into --

19 MR. LEE: Plays into things.

20 THE COURT: -- the argument you want to make.

21 Go ahead.

22 MR. LEE: As far as a continuance, this is a case
23 where we were appointed as counsel, me and Mr. Nguyen were
24 appointed as counsel after Mr. Lynch was allowed to withdraw, so
25 we haven't actually had the case that long. We did receive a

1 little bit more discovery several days ago, and sounds like
2 there's other discovery --

3 THE COURT: Headed your way.

4 MR. LEE: -- coming to us.

5 THE COURT: Okay.

6 MR. LEE: So I think it's appropriate to continue this
7 case to September 17th. I didn't specifically talk about that
8 date to Ms. Gonzalez.

9 I know at one point in time she wanted to address a
10 violation of her speedy trial right through her previous
11 counsel, who had requested one continuance after he was
12 appointed to the case. For right now, I'm not arguing that, I'm
13 reserving it. I did speak a little bit to the government about
14 that issue.

15 So I suppose what I'd ask the court to do, just
16 because she was -- Ms. Gonzalez raised that with me, is reserve
17 the right to argue prior violations of speedy trial, but
18 understanding we're in a position where we were just appointed,
19 we need information, I think that if we didn't continue the
20 case, that that could form a basis of ineffective assistance of
21 counsel, just considering what's going on with this case and
22 what kind of penalties Ms. Gonzalez is facing. So we're asking
23 the court to continue this case to a trial date of September
24 17th.

25 THE COURT: So that's about 120 days from now. The

1 trial date you're suggesting would be September 17th?

2 MR. LEE: That's correct. And I'm trying to be a
3 little bit more reasonable with the trial date. I know
4 originally we were looking at August. The government is gone in
5 August, and, so, realistically, September. I'd rather do that
6 than set over 60 days, and ask for another continuance.

7 THE COURT: No, I understand.

8 Mr. Garriques, any objection to the -- really, there's
9 two issues, the continuance, but also a continuance for 120
10 days. Objections to that?

11 MR. GARRIQUES: The government has no objection. The
12 government believes that the interests of justice outweigh the
13 defendant's and public's interest in speedy trial, given the
14 discovery that was recently received by my office and produced
15 to defense dealing with a number of Facebook accounts. Mr. Lee
16 is new to the case. And there's also the recent incident from a
17 couple days ago, which the county and the government will be
18 investigating and could affect the outcome of this case.

19 THE COURT: Is there any likelihood that that will
20 result in federal charges, or is that more of a state matter?

21 MR. GARRIQUES: Inmates held on federal warrants over
22 there are in federal custody, so there could be state or federal
23 charges resulting from incidents in the jail. But it's under
24 investigation, so I can't speak to where that will go. But that
25 would certainly warrant a continuance in this case as well.

1 THE COURT: All right. All right.

2 I'm inclined to grant the continuance. Let's get some
3 dates, and then I have some other things I want to say, some
4 questions I want to ask the defendant.

5 Erin, assuming a trial date of September 17th, I'd
6 like to have a pretrial date, in the normal course of things, 10
7 days or so before that. Do you have a date to suggest?

8 MR. LEE: I do. I would suggest September 5th at
9 11 a.m.

10 THE COURT: All right. Mr. Garriques, assuming this
11 case goes to trial, can you estimate the length of that trial?

12 MR. GARRIQUES: Your Honor, I believe it would be,
13 with the defense case, the government and defense case, perhaps
14 three days.

15 THE COURT: Three days. Mr. Lee, I know that you're
16 new to the case, and you're kind of just getting started, but
17 what do you think about that estimate, three days? Do you think
18 that will be enough?

19 MR. LEE: Yes. I would have estimated three or four
20 days.

21 THE COURT: All right. I'm inclined to grant the
22 continuance, so that the trial date, three-day jury trial at
23 this point, would be September 17th of this year. And we will
24 have final, at this point, anyway, final pretrial hearing, on
25 September 5, 2018, at 11 a.m.

1 However, I've got a few questions first for
2 Ms. Gonzalez. Ms. Gonzalez, have you understood everything
3 we've been talking about this morning?

4 THE DEFENDANT: I have.

5 THE COURT: All right. So your new attorney, Mr. Lee,
6 and his partner, Mr. Nguyen, have asked for a continuance
7 because they're new to the case. They need time to work on the
8 case to get ready to defend you, and to prepare for trial. Do
9 you understand the request they've made?

10 THE DEFENDANT: I do understand.

11 THE COURT: And do you agree with the request they've
12 made?

13 THE DEFENDANT: I don't agree.

14 THE COURT: All right. Why not?

15 THE DEFENDANT: Because I've been held already here
16 for a long time, and I feel like Mr. Lynch had appropriate of
17 time to get my case -- get me to trial already from the moment
18 that I was arraigned. And even though Mr. Lee -- I understand
19 that he does need time to work on my case. However, if I'm
20 going to go to jail, or to prison, or whatever it is, I'd rather
21 just get it done and over with, and, you know, be sentenced, and
22 do my time if I need to, if that's the case.

23 THE COURT: Very good. I understand the nature of
24 your objection.

25 I'm going to grant the request. I'm not going to ask

1 for a speedy trial waiver, because your client does object. But
2 the court finds good cause exists to give the defense more time
3 to prepare.

4 I've explained that to you before, Ms. Gonzalez. Do I
5 need to explain it again, why I'm doing that?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: It appears you understand why I'm taking
8 that action.

9 However, given the fact that Ms. Gonzalez has
10 consistently objected to these defense requests for continuance,
11 I think -- and seems like we're going to have some additional
12 motions from Mr. Lee and Mr. Nguyen, I'm going to set another
13 pretrial before the 5th, just to make sure that everything is
14 proceeding smoothly.

15 I don't want to do that before you're ready, Mr. Lee.
16 You've indicated that you're -- you want to continue the
17 detention hearing and make some decisions about that. When
18 you're ready for me to make the decision, if you decide to
19 proceed with that, let Erin know, and we'll put it on the
20 calendar as soon as possible.

21 MR. LEE: And I will note it.

22 THE COURT: But the other things that you've said
23 you're thinking about, such as speedy trial motion, or if you
24 have any discovery issues that you need to sort out, I'd like to
25 address that before September 5th.

1 MR. LEE: Okay.

2 THE COURT: When do you think you'll be ready one way
3 or the other if you want to proceed with a speedy trial motion?

4 MR. LEE: I suppose what I would ask for is maybe a
5 date -- I know the government, prosecutor, is gone in August.

6 THE COURT: I was thinking of a date in July. And it
7 could be that there's nothing to talk about, but, then, if there
8 is, we've got a time reserved.

9 MR. GARRIQUES: I would suggest mid July, that's six,
10 seven weeks, and having deadlines before then, a deadline
11 perhaps four weeks from now, and hearing mid July on the
12 matters, if there are any.

13 MR. LEE: That's fine. I want to exhaust any
14 possibility of working this case out, considering what
15 Ms. Gonzalez is looking at, which is, potentially, life in
16 prison. I do know, in speaking to the government, that if those
17 types of motions are filed, then his intent is just to withdraw
18 any offers at that point in time, so that's why I was giving
19 myself some time to deal with that.

20 THE COURT: All right. Erin, do you have an early to
21 mid July date that works?

22 THE CLERK: We have July 18th at 11 am.

23 THE COURT: Does that work with counsel?

24 MR. GARRIQUES: Yes, Your Honor.

25 MR. LEE: That's fine.

1 THE COURT: I'll set the first pretrial hearing, then,
2 July 18 at 11 a.m. And, Mr. Lee, if you want to proceed with
3 the detention review, you can do that then, or you can ask Erin
4 for a date before then, if you're ready to do that. I
5 understand you're not ready to do that today.

6 MR. LEE: If we end up arguing that, I'd probably get
7 a date ahead of time, maybe into June or something.

8 THE COURT: Okay. And, you know, my offer will be the
9 same on this case as it is on all cases. If the parties reach
10 an agreement, and a change of plea is contemplated, let Erin
11 know. We can always do that independent of these dates. I say
12 that only because of comments that your client made that she
13 would just as soon get things over with. So if she gets to that
14 point, we can do that when everybody is ready.

15 MR. LEE: Okay. Thank you.

16 THE COURT: All right. I'm not saying she has to
17 plead guilty. I'm just trying to find time on the schedule to
18 accommodate if decisions were made.

19 MR. LEE: We appreciate that. Thank you.

20 THE DEFENDANT: Thank you.

21 THE COURT: Ms. Gonzalez, do you have any questions at
22 this point?

23 THE DEFENDANT: I don't.

24 THE COURT: Thank you.

25 (ADJOURNMENT AT 10:12 A.M.)

1 REPORTER'S CERTIFICATE
2
3
45 I, LYNETTE WALTERS, Registered Professional Reporter,
6 Certified Realtime Reporter and Certified Court Reporter;

7 DO HEREBY CERTIFY:

8 That the foregoing transcript, Pages 1 through 12,
9 contains a full, true, complete and accurate transcription of my
10 shorthand notes of all requested matters held in the foregoing
11 captioned case, including all objections and exceptions made by
12 counsel, rulings by the court, and any and all other matters
13 relevant to this case.

14 DATED this 14th day of January, 2020.

15

16

17 s/ Lynette Walters18 LYNETTE WALTERS, RPR, CRR, CCR
CCR NO. 2230

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 24, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

MARIA ANDREA GONZALEZ,
Defendant.

No. 1:18-cr-02005-SAB

**ORDER GRANTING MOTION
TO CONTINUE**

The Court held a pretrial conference in this matter on May 23, 2018. Troy Lee and Tim Nguyen appeared on behalf of Defendant, who was present in the courtroom, and Ian Garriques appeared on behalf of the Government.

At the hearing, the Court addressed Defendant's Motion to Continue Trial and Pretrial Dates, ECF No. 77. Defense counsel, who was recently appointed, requests additional time to review discovery and prepare an adequate defense on behalf of Defendant. The Government agrees with counsel that the circumstances of this case warrant a continuance. Ms. Gonzalez, however, disagrees with the motion.

For the reasons stated on the record, the Court grants Defendant's motion. The Court finds the ends of justice served by taking such action outweigh the interest of the public and the defendant in a speedy trial, and the failure to grant such a continuance would deny counsel for the defendant reasonable time necessary for effective preparation.

//

ORDER GRANTING MOTION TO CONTINUE ^

1 **Accordingly, IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Continue Trial and Pretrial Dates, ECF No. 77, is

3 **GRANTED.**

4 2. The current trial date of May 29, 2018, is **STRICKEN** and **RESET** for
5 **September 17, 2018**, in **Yakima**, Washington. Counsel shall appear in court at
6 8:30 a.m. on the first day of trial to address any pending pretrial matters. Jury
7 selection shall begin at 9:00 a.m. The parties estimate a trial length of three days.

8 3. The Pretrial Conference/Motions Hearing is **continued to September 5,**
9 **2018 at 11:00 a.m.** in **Yakima**, Washington. All pretrial motions shall be filed no
10 later than **August 8, 2018**.

11 4. An additional motion hearing is **SET** for **July 18, 2018 at 11:00 a.m.** in
12 **Yakima**, Washington. Any motions related to Defendant's right to a speedy trial
13 shall be filed no later than **June 20, 2018**.

14 5. Pursuant to 18 U.S.C. § 3161(h)(7)(A) and (h)(7)(B)(iv), the time between
15 May 29, 2018, the current trial date, until September 17, 2018, the new trial date, is
16 **DECLARED EXCLUDABLE** for purposes of computing time under the Speedy
17 Trial Act. The Court finds the ends of justice served by taking such action
18 outweigh the best interest of the public and the defendant in a speedy trial, and the
19 failure to grant such a continuance would deny counsel for the defendant
20 reasonable time necessary for effective preparation.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

ORDER GRANTING MOTION TO CONTINUE ^

1 6. Trial briefs, proposed voir dire, jury instructions, verdict forms, exhibit
2 lists, expert witness lists, and summaries of expert testimony shall be filed and
3 served by all parties on or before **September 10, 2018**.

4 7. The hearing on Defendant's Motion for Review of Magistrate Judge
5 Decision, ECF No. 58, is **continued**. Defendant shall inform the Court when she is
6 prepared to proceed with the hearing.

7 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
8 enter this Order and furnish copies to counsel.

9 **DATED** this 24th day of May 2018.



13 Stanley A. Bastian

14 Stanley A. Bastian
15 United States District Judge

1

2

3

Troy J. Lee and Tim Nguyen
TROY LEE & ASSOCIATES
117 N. 3rd Street, Suite 201
Yakima, WA 98901
(509) 452-6235
Fax: (509) 452-2518

7

Attorneys for Defendant
MARIA ANDREA GONZALEZ

9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 MARIA ANDREA GONZALEZ,

16 Defendant.

Case No.: 1:18-CR-2005-SAB-1

Defendant's Motion and
Memorandum in Support to
Continue Trial and Pretrial Dates

**July 18, 2018 at 11:00 a.m., in
Yakima Federal District Court,
Room 203.**

17

TO: JOSEPH HARRINGTON, UNITED STATES ATTORNEY
IAN GARRIQUES, ASSISTANT UNITED STATES ATTORNEY

19

MOTION

20

21 Troy J. Lee and Tim Nguyen, of TROY LEE & ASSOCIATES,
22 hereby moves this court for an order continuing the pretrial conference and
23 trial currently scheduled in the above-captioned matter.
24

25

DEFENDANT'S MOTION AND MEMORANDUM
TO CONTINUE -

1 **MEMORANDUM IN SUPPORT**

2 Trial in the above-captioned case is currently scheduled for a pretrial
3 conference on September 5, 2018 and trial on September 17, 2018 at 9:00
4 A.M. in Yakima, Washington. ECF No. 81.
5

6 Ms. Gonzalez was just indicted on new charges and alternative
7 counsel was appointed. Defense counsel on this case requests a reset of the
8 pretrial and trial dates to any convenient date for the Court in December of
9 this year.
10

11 This continuance would allow defense counsel an opportunity to
12 discuss the new allegations with Ms. Gonzalez and her other court appointed
13 attorney as well as any potential resolutions. As the Court is aware, if Ms.
14 Gonzalez is convicted of this offense there is a mandatory life sentence and
15 therefore this request is not unreasonable considering the possible sentence.
16
17

18 It is unclear if Ms. Gonzalez will be objecting to this continuance.
19 Counsel has an opportunity to discuss this continuance with the Assistant
20 United States Attorney and he has no objection to this request.
21
22

23
24 RESPECTFULLY SUBMITTED this 17th day of July, 2018.
25

s/ Troy J. Lee
Troy Lee, WSBA No. 30527

1 Attorney for Defendant
2 117 N. 3rd Street, Suite 201
3 Yakima, WA 98901
4 (509) 452-6235
5 (509) 452-2518 fax
6 troylee@troyleelaw.net

7 s/ Tim Nguyen
8 Tim Nguyen, WSBA No. 50579
9 Attorney for Defendant
10 117 N. 3rd Street, Suite 201
11 Yakima, WA 98901
12 (509) 452-6235
13 (509) 452-2518 fax
14 timnguyen@troyleelaw.net

15
16
17
18
19
20
21
22
23
24
25

DEFENDANT'S MOTION AND MEMORANDUM
TO CONTINUE-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONUNITED STATES OF AMERICA,) Case No. 1:18-cr-2005-SAB
Plaintiff,)
v.) July 18, 2018
MARIA ANDREA GONZALEZ,)
Defendant.) Yakima, Washington
) Status Hearing
)
) Pages 1 to 16BEFORE THE HONORABLE STANLEY A. BASTIAN
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff: Ian L. Garriques
Ian.Garriques@usdoj.gov
United States Attorney's Office
402 East Yakima Avenue
Suite 210
Yakima, WA 98901
509-454-4425For the Defendant: Troy Joseph Lee
TroyLee@qwestoffice.net
Tim Nguyen
Dixon & Lee
7 South 2nd Street
Suite 304
Yakima, WA 98901
509-452-6235Official Court Reporter: Kimberly J. Allen, CCR #2758
United States District Courthouse
P.O. Box 685
Richland, Washington 99352
(509) 943-8175Proceedings reported by mechanical stenography; transcript
produced by computer-aided transcription.KIMBERLY J. ALLEN, CRR, RMR, RPR, CSR
OFFICIAL COURT REPORTER

1 INDEX2 WITNESS INDEX3 Plaintiff Witness: Page

4 None

5 *****

6 Defense Witnesses: Page

7 None

8 EXHIBITS ADMITTED9 Plaintiff Description Page

10 None

11 Defense Description Page

12 None

13 GENERAL INDEX14 Page

15 Reporter's Certificate.....16

1 (July 18, 2018; 11:08 a.m.)

2 THE COURT: Counsel, do you need just a minute with your
3 client?

4 MR. LEE: If I could have one second.

11:08:13 5 THE COURT: Okay.

6 (Pause in proceedings.)

7 THE COURT: All right. Let's go ahead and call the case
8 in just a minute.

9 THE COURTROOM DEPUTY: The matter now before the
10 Court --

11 THE COURT: You can finish, if you weren't done.

12 THE COURTROOM DEPUTY: The matter now before the Court
13 is the *United States of America v. Maria Andrea Gonzalez*, Case
14 No. 1:18-cr-02005-SAB. This is the time set for a pretrial
15 status hearing.

16 Counsel, please state your presence for the record.

17 MR. GARRIQUES: Good morning, Your Honor. Ian Garriques
18 for the United States.

19 THE COURT: Good morning.

20 MR. LEE: Troy Lee on behalf of Ms. Gonzalez, Your
21 Honor. Good morning.

22 MR. NGUYEN: Tim Nguyen, the CJA-appointed mentee in
23 this case, Your Honor.

24 THE COURT: All right. We're here for pretrial. I
25 understand there's a motion to continue.

1 Mr. Garriques?

2 MR. GARRIQUES: I'll allow the defense to comment, and
3 then I can make follow-up comments since --

4 THE COURT: All right. Very good.

11:09:32 5 MR. GARRIQUES: -- it's their motion.

6 THE COURT: Okay. Mr. Lee.

7 MR. LEE: Good morning.

8 And this is the date set for pretrial. I believe
9 yesterday or the day before, a motion to continue was filed on
11:09:48 10 Ms. Gonzalez's behalf. I know this is a situation -- I did
11 speak to Ms. Gonzalez briefly this morning, about whether there
12 was going to be -- whether she was going to object to the
13 continuance. I know this is a matter that was before Your Honor
14 about a month and a half ago at the last pretrial conference,
11:10:05 15 and there was an objection to a continuance at that point in
16 time, after we had just come on board as second counsel.

17 At that time it was discussed potentially filing a
18 motion to dismiss based on speedy trial violations or a speedy
19 trial violation occurring prior to that date, and that has yet
11:10:25 20 to be filed. It is a case that we've prepared the motion; we're
21 holding off. The complicating factor in this case -- and I
22 should point out that as far as discovery, this case is a little
23 bit unusual in that we're not talking about wiretaps, we're not
24 talking about really cumbersome discovery, we're not talking
11:10:43 25 about confidential informants in this particular case. It's a

1 lot of jail phone calls. I don't know exactly, as far as from
2 the Government's perspective, how many of those phone calls
3 would be elicited. I know the other evidence in this case has
4 to do with Ms. Gonzalez's arrests and what was allegedly on her
11:11:02 5 at the time of her arrest.

6 So if this case is continued, prior to any sort of a
7 trial, if this does end up going to trial, then I'll get with
8 the Government and figure out ultimately which specific phone
9 calls are going to be utilized and see which recordings are
11:11:17 10 available from there.

11 The motion to continue was primarily based on recently,
12 I believe it was this week or even -- I think it was last week,
13 Mrs. Gonzalez was arraigned on a new indictment, a new federal
14 indictment. We were contacted about potentially representing
11:11:34 15 Ms. Gonzalez on that. However, due to potential witnesses,
16 alleged victims in that case, we have conflicts, and so we
17 weren't able to take it. That case is assigned to Mr. Hormel
18 out of Spokane. He has yet to review discovery. I'm sure
19 discovery was provided or will be provided this week.

20 However, we're not doing our due diligence, as I
21 explained to Ms. Gonzalez, without consulting with Mr. Hormel
22 and seeing where that case stands and figuring out this case in
23 conjunction with that case.

24 In addition, as we explained the last time, this case
11:12:08 25 involves -- if Ms. Gonzalez is to be convicted, this case

1 carries with it a potential mandatory life sentence. So that
2 definitely affects the other case or what's going to happen with
3 the resolution of that case as well.

4 So ultimately asking the Court to continue this case.

11:12:25 5 In our motion to continue we put December. The reason I had put
6 December is a couple reasons. Number one, I wasn't sure of the
7 Court's availability as far as their calendar. Second, I wasn't
8 sure if it was going to be a situation where at some point, I'm
9 assuming at the next pretrial conference for that other case,
11:12:44 10 Mr. Hormel will be asking to continue the case. It's pretty
11 serious allegations, and so I don't think he's going to be
12 prepared, and so then trying to prevent a leapfrogging at that
13 point.

14 In addition, I didn't know if there was going to be a
11:12:55 15 request to continue on Mr. Hormel's case, if the Court was just
16 going to then set that case at the same time as Ms. Gonzalez's
17 other case, and so I didn't know if there was -- the Court was
18 wanting to kind of consolidate these cases at least into one
19 pretrial conference.

20 11:13:12 So that's where we are at at this point.

21 THE COURT: Okay. Thank you.

22 So I just want to make sure I understand. You've done a
23 good job explaining, but I want to make sure I understand where
24 we are. This case is the drug-related cases, and that is right
11:13:26 25 now set for jury trial on September 17th, and you're hoping to

1 continue that into December, in part because of the new charges,
2 which are found in Case No. 18-2039. You're not the defense
3 attorney on that case; Mr. Hormel is, and that I'll call the
4 assault-related allegations. And that case is also set for
11:13:52 5 trial in -- right now, anyway, at some point -- September 17th.
6 And one of the reasons you'd like to continue your case is
7 because you'd like some time to find out more about this new
8 case, discuss it with Mr. Hormel, and see how that factors into
9 your plans to defend and advise your client.

11:14:21 10 Is that -- do I have that accurate?

11 MR. LEE: That's correct.

12 THE COURT: All right. Ms. Gonzalez, do you understand
13 the request that your client [sic] just made? He wants to move
14 the trial of this drug-related case from September to December.
11:14:36 15 I haven't said "yes" yet. I just want to make sure you
16 understand that request.

17 THE DEFENDANT: I do understand.

18 THE COURT: And do you agree or disagree with that
19 request?

11:14:44 20 THE DEFENDANT: Disagree.

21 THE COURT: Why do you disagree with that request?

22 THE DEFENDANT: They are two completely different cases,
23 and I feel like, um, the other case has nothing to do with my
24 drug case.

11:14:52 25 THE COURT: Okay. Do you have anything else you'd like

1 to say in terms of your disagreement?

2 THE DEFENDANT: No.

3 THE COURT: All right. Mr. Garriques, I'll hear from
4 the Government regarding the motion to continue.

11:15:06 5 MR. GARRIQUES: Yes, Your Honor.

6 The Government has no objection to Mr. Lee's motion to
7 continue the case, despite the defendant's objection.

8 Ms. Gonzalez was arraigned on the separate assault case last
9 week. The Government has not had an opportunity to speak with
11:15:22 10 Mr. Hormel on that case. Discovery is in the process of being
11 provided to Mr. Hormel.

12 I would concur with Mr. Lee's comments that it's, in my
13 experience, likely that Mr. Hormel will be seeking a continuance
14 of that case. The Government -- based on the evidence involved.
11:15:40 15 In addition, Mr. Lee, we had a discussion this morning as to
16 potential jail calls that might be admitted at the instant drug
17 case trial, and I believe Mr. Lee is still in the process of
18 reviewing those. And so in addition to the --

19 THE COURT: And that's a multi-defendant case, the
11:15:57 20 assault?

21 MR. GARRIQUES: That second case, the assault cases,
22 yes, it's a multi-defendant case, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. GARRIQUES: So based on the status of the other
11:16:08 25 case, it being recently charged, the effect as outlined by

1 Mr. Lee as to the outcome in this case and how the defense -- or
2 at least defense counsel would like to proceed, as well as the
3 articulation regarding the jail calls to be reviewed and/or
4 discussed with the Government, the Government believes that a
11:16:28 5 continuance would be warranted in this case, and the Government
6 would ask, as set forth in its prior response to an earlier
7 motion to continue based on -- from prior counsel, that the
8 Court make the specific finding in the record, either in its
9 order or here, that the ends of justice served by taking that --
11:16:48 10 such action outweigh the best interests of the public and the
11 defendant in a speedy trial; and that the failure to grant such
12 continuance would deny counsel for the defendant, or the
13 attorney for the Government, the reasonable time necessary for
14 effective preparation, taking into account the exercise of due
11:17:03 15 diligence. And, again, this is in 18 U.S.C. 3161(h) (7) (A) and
16 (B) (iv).

17 So the Government submits that a continuance would be
18 appropriate in this case and -- depending on the Court's
19 availability with the trial setting.

11:17:22 20 THE COURT: Are your witnesses on this drug case, if you
21 can reveal it, are they primarily law enforcement officers?

22 MR. GARRIQUES: Yes.

23 THE COURT: Do you have any input in terms of when the
24 trial should take place? December trials always concern me a
11:17:41 25 little bit because people make holiday plans, and then all of a

1 sudden we've got problems, and so it's better to anticipate
2 those now than a week before trial.

3 MR. GARRIQUES: The Government would have no objection
4 to setting it in mid November as well. I do agree with
11:17:56 5 Mr. Lee's point that, you know, Mr. Hormel may come in here and
6 seek a continuance, which may affect. If they both decide to go
7 to trial, that's a different story. They're separate cases, but
8 there may be a continuance in that case.

9 THE COURT: And there's not going to be a motion from
11:18:10 10 the Government to join these two cases.

11 MR. GARRIQUES: No.

12 THE COURT: They seem completely unrelated.

13 MR. GARRIQUES: No, they're unrelated. Same defendant
14 and additional defendants.

11:18:18 15 THE COURT: Yeah.

16 MR. GARRIQUES: If there's a concern as to
17 Ms. Gonzalez's instant objection to the continuance, if the
18 Court wants to set it earlier, I would suggest mid November,
19 prior -- prior to Thanksgiving, as articulated by the Court --

11:18:27 20 THE COURT: Okay.

21 MR. GARRIQUES: -- with the holidays and also winter
22 travel for jurors and what have you, if there's snow conditions.

23 THE COURT: Okay. All right. Let me just get the
24 November calendar up on my screen.

11:18:44 25 Okay. Thank you.

1 One last question, I guess, I meant to ask you,
2 Mr. Garriques.

3 MR. GARRIQUES: Yes.

4 THE COURT: Is there any reason why one case should be
11:18:54 5 tried before the other case?

6 MR. GARRIQUES: I don't -- I'm not aware of that.

7 MR. LEE: I should probably point out --

8 THE COURT: Mr. Lee?

9 MR. LEE: I should probably point out a couple things.

11:19:08 10 I -- as I stated before, this was a case where I know
11 Ms. Gonzalez wanted a motion to dismiss filed for a speedy trial
12 waiver. One of the reasons we've held off on that -- and we
13 knew this potential indictment was coming on the new charges,
14 but one of the reasons we held off on that is if that's filed,
15 in communications with the Government, then all offers, all
16 negotiations are off the table on this case.

17 As I indicated, this is a case where Ms. Gonzalez, if
18 convicted, potentially may, and very likely will, receive life
19 in prison. That would probably effectively cut off any
20 negotiations with the other case that's now pending that I don't
21 know anything about and I'm not the attorney on.

22 Second, I know -- you know, Ms. Gonzalez's primary issue
23 with these cases is she is being held on this, and I'm mindful
24 of that; I'm cognizant of that. However, now we're dealing with
11:20:05 25 a situation where we not only have this case in which she's

1 being held on but the other case on which she's been held on,
2 and so if there is some type of speedier resolution on this
3 case, she's -- no matter what happens, she's still being held on
4 the other matter. So ...

11:20:20 5 THE COURT: Understood. And I want to say, Mr. Lee, I
6 understand that you alerted the Court that your client didn't
7 agree with your request. I understand that, and I understand
8 you're being as careful as you can be in terms of fulfilling
9 your duties to the Court, your duties to the client, and
11:20:35 10 respecting your client's wishes, which aren't always the same as
11 yours. So I appreciate that.

12 MR. LEE: Thank you.

13 THE COURT: All right. Let's talk about a new trial
14 date. I am inclined to continue it. I was just kind of
11:20:49 15 scrolling through the Court's calendar, and, boy, just this
16 morning we kind of backed it up for November and December, but
17 let's do our best.

18 I'm looking at prior to Thanksgiving, and I think if I
19 were to do that, I would put it on top of a civil case, which
11:21:09 20 has shown no indication that those parties even know what the
21 word "settlement" means, let alone how to settle a case. And so
22 it looks like we are looking into -- I'm just looking at -- I
23 mean, I know nobody likes to do this, but, really, the most
24 convenient thing might be that last week of November, right
11:21:36 25 after Thanksgiving, November 26th.

1 Mr. Garriques, if the case goes to trial, how long will
2 it take to try?

3 MR. GARRIQUES: The Government would believe that it's
4 three to four days. And on that, the Government has been in
11:21:55 5 that situation in the past. The Government would object to
6 setting it to the week after Thanksgiving, just in the
7 difficulty in conferring with witnesses who are likely out of
8 town right before trial, and issues that may come up. So if we
9 can find another date --

11:22:09 10 THE COURT: Okay. How about if we started that Tuesday,
11 though, the 27th?

12 MR. GARRIQUES: And -- sorry. I was -- I missed. Was
13 the Court unavailable prior to Thanksgiving?

14 THE COURT: Well, I'm going into that now and looking --
11:22:33 15 hang on.

16 We could do it December 10th, that week of
17 December 10th.

18 MR. GARRIQUES: The Government would request that date.

19 MR. LEE: And defense is fine with that.

11:22:47 20 THE COURT: Erin, I'm supposed to be with the circuit in
21 early December, but it's not showing up on this calendar.

22 THE COURTROOM DEPUTY: It looks like December of the
23 first week.

24 THE COURT: Oh, there it is. Okay. So December 10th
11:23:00 25 would work.

1 Does that work? I'm sorry, I didn't hear what you said.

2 MR. LEE: That works.

3 THE COURT: That works okay?

4 MR. GARRIQUES: (Nodded.)

11:23:06 5 THE COURT: All right. Let's set it for December 10th,
6 and we'll just reserve that whole week to get the case in, if
7 necessary.

8 How about a pretrial?

9 THE COURTROOM DEPUTY: How about November 28th at 10:30?

11:23:17 10 MR. LEE: That's fine. Thank you.

11 THE COURT: Okay. Mr. Garriques, does that work for
12 you?

13 MR. GARRIQUES: Yes, Your Honor.

14 THE COURT: Okay. Ms. Gonzalez, I understand your
15 objection. We've -- you can just stand, but you don't need to
16 approach. We've had this conversation before, but I want to
17 explain it to you. I think your attorney does need more time to
18 prepare and to coordinate with the new case that's now pending
19 that you were arraigned on recently, and so I'm going to give
20 him that time, and I know that you object to it, but I will
21 continue the case.

22 Mr. Garriques will make the necessary findings in the
23 written order, but I do find the ends of justice are served by
24 continuing the case, and they outweigh any need for a speedy
25 trial.

1 So I'll continue it until December 10th.

2 THE DEFENDANT: Thank you, Your Honor.

3 THE COURT: And I'm not requiring a speedy trial waiver,
4 since Ms. Gonzalez has indicated that she won't sign one, in the
11:24:12 5 past anyway, not today.

6 THE DEFENDANT: Thank you.

7 THE COURT: Mr. Lee, anything else?

8 MR. LEE: No, Your Honor. Thank you.

9 THE COURT: Mr. Garriques?

11:24:18 10 MR. GARRIQUES: No, Your Honor.

11 THE COURT: All right. Thank you.

12 The Court will take a brief recess while we get the next
13 person here. Take your time.

14 THE COURTROOM DEPUTY: All rise.

11:24:44 15 Court is in recess.

16 (Hearing concluded: 11:24 a.m.)

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

3 I, KIMBERLY J. ALLEN, do hereby certify:

4 That I am an Official Court Reporter for the United
5 States District Court for the Eastern District of Washington in
6 Richland, Washington;

7 That the foregoing proceedings were taken on the date
8 and at the time and place as shown on the first page hereto; and

9 That the foregoing proceedings are a full, true and
10 accurate transcription of the requested proceedings, duly
11 transcribed by me or under my direction.

12 I do further certify that I am not a relative of,
13 employee of, or counsel for any of said parties, or otherwise
14 interested in the event of said proceedings.

15 DATED this 8th day of January, 2020.

Kimberly J. Allen, CRR, RMR, RPR, CCR(WA)
Washington CCR No. 2758
Official Court Reporter
Richland, Washington

KIMBERLY J. ALLEN, CRR, RPR, CSR
OFFICIAL COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT Jul 18, 2018
EASTERN DISTRICT OF WASHINGTON SEAN F. McAVOY, CLERK

UNITED STATES OF AMERICA,
Plaintiff,
v.
MARIA ANDREA GONZALEZ,
Defendant.

No. 1:18-cr-02005-SAB

**ORDER GRANTING MOTION
TO CONTINUE**

The Court held a hearing in this matter on July 18, 2018. Troy Lee and Tim Nguyen appeared on behalf of Defendant, who was present in the courtroom, and Ian Garriques appeared on behalf of the Government. Pending before the Court is Defendant's Motion to Continue Trial and Pretrial Dates, ECF No. 82.

Mr. Lee informs the Court that Defendant was recently indicted¹ on new federal criminal charges, and is represented by Stephen Hormel in relation to those charges. Mr. Lee requests additional time to discuss the new allegations against Defendant with Mr. Hormel. Defendant disagrees with the motion.

For the reasons stated on the record, the Court grants Defendant's motion. The Court finds the ends of justice served by taking such action outweigh the interest of the public and the defendant in a speedy trial, and the failure to grant such a continuance would deny counsel for the defendant reasonable time necessary for effective preparation.

//

¹ Case No. 1:18-cr-02039-SAB-1.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion to Continue Trial and Pretrial Dates, ECF No. 82, is

3 **GRANTED.**

4 2. The current trial date of September 17, 2018, is **STRICKEN** and **RESET**
5 for **December 10, 2018**, at **9:00 a.m.**, commencing with a final pretrial conference
6 at 8:30 a.m. All hearings shall take place in **Yakima**, Washington.

7 3. A pretrial conference is **set** for **November 28, 2018**, at **10:30 a.m.** in
8 **Yakima**, Washington.

9 4. All pretrial motions shall be filed on or before **November 14, 2018**.

10 5. Pursuant to 18 U.S.C. § 3161(h)(7)(A) and (h)(7)(B)(iv), the time between
11 September 17, 2018, the current trial date, until December 10, 2018, the new trial
12 date, is **DECLARED EXCLUDABLE** for purposes of computing time under the
13 Speedy Trial Act. The Court finds the ends of justice served by taking such action
14 outweigh the best interest of the public and the defendant in a speedy trial, and the
15 failure to grant such a continuance would deny counsel for Defendant reasonable
16 time necessary for effective preparation.

17 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
18 enter this Order and furnish copies to counsel.

19 **DATED** this 18th day of July 2018.



23 Stanley A. Bastian

24 Stanley A. Bastian
25 United States District Judge
26
27
28

1
2
3 Troy J. Lee and Tim Nguyen
4 TROY LEE & ASSOCIATES
5 117 N. 3rd Street, Suite 201
6 Yakima, WA 98901
(509) 452-6235
Fax: (509) 452-2518

8 Attorneys for Defendant
MARIA ANDREA GONZALEZ

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 vs.
15 MARIA ANDREA GONZALEZ,
16 Defendant.

Case No.: 1:18-CR-2005-SAB-1

Defendant's Third Motion and
Memorandum in Support to
Continue Trial and Pretrial Dates

**November 7, 2018 at 10:30 a.m.,
in Yakima Federal District
Court, Room 203.**

17 TO: JOSEPH HARRINGTON, UNITED STATES ATTORNEY
18 IAN GARRIQUES, ASSISTANT UNITED STATES ATTORNEY

MOTION

21 Troy J. Lee and Tim Nguyen, of TROY LEE & ASSOCIATES,
22 hereby moves this court for an order continuing the pretrial conference and
23 trial currently scheduled in the above-captioned matter.

DEFENDANT'S MOTION AND MEMORANDUM
TO CONTINUE

MEMORANDUM IN SUPPORT

Trial in the above-captioned case is currently scheduled for a pretrial conference on November 28, 2018 and trial on December 10, 2018 at 9:00 A.M. in Yakima, Washington. ECF No. 84.

Counsel respectfully requests that the current trial date be stricken and reset into mid March of the 2019 calendar year. The basis for the continuance is that Ms. Gonzalez has been indicted with a new offense on July 10, 2018. 1-18-CR-02039-SAB. There is a current offer to settle which would resolve both cases. Ms. Gonzalez would like an opportunity to fully investigate her newer case with her counsel before agreeing to accept any offer to settle. Additionally, Ms. Gonzalez is considering hiring alternative counsel in this matter and the additional time requested would allow her an opportunity to do so. It is defense counsel's understanding that Ms. Gonzalez is not objecting to this requested continuance.

The Government has no objection the requested continuance.

RESPECTFULLY SUBMITTED this 2nd day of November, 2018.

s/ Troy J. Lee
Troy Lee, WSBA No. 30527
Attorney for Defendant
117 N. 3rd Street, Suite 201

1 Yakima, WA 98901
2 (509) 452-6235
3 (509) 452-2518 fax
4 troylee@troyleelaw.net

5 s/ Tim Nguyen
6 Tim Nguyen, WSBA No. 50579
7 Attorney for Defendant
8 117 N. 3rd Street, Suite 201
9 Yakima, WA 98901
10 (509) 452-6235
11 (509) 452-2518 fax
12 timnguyen@troyleelaw.net

13
14
15
16
17
18
19
20
21
22
23
24
25

DEFENDANT'S MOTION AND MEMORANDUM
TO CONTINUE-

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
Plaintiff,) NO. 1:18-2005-SAB-1
-vs-)
MARIA ANDREA GONZALEZ,) November 7, 2018
Defendant.) Yakima, Washington

VERBATIM REPORT OF PROCEEDINGS
PRETRIAL CONFERENCE/MOTION HEARING

BEFORE THE HONORABLE STANLEY A. BASTIAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

14 FOR THE PLAINTIFF: IAN L. GARRIQUES
15 Assistant United States
16 Attorneys 402 E. Yakima Ave. #210
Yakima, WA 98901

17 FOR THE DEFENDANT: TROY J. LEE
18 TIM NGUYEN
19 Attorneys at Law.
117 N. Third St., #201
Yakima, WA 98901

21 REPORTED BY: Lynette Walters, RPR, CRR, CCR
22 Official Court Reporter
23 P. O. Box 845
Yakima, WA 98907
(509) 573-6613

25 Proceedings reported by mechanical stenography; transcript produced by computer-aided transcription.

1

INDEX

2

Page

3

Defendant's Motion to Continue
Court's Ruling

3

4

14

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (NOVEMBER 7, 2018, 10:39 A.M.)

2 THE CLERK: The matter now before the court is
3 the United States of America versus Maria Andrea Gonzalez,
4 Case No. 1:18-CR-02005-SAB. This is the time set for a motion
5 hearing.

6 Counsel, please state your presence for the record.

7 MR. GARRIQUES: Good morning, Your Honor. Ian
8 Garriques for the United States.

9 THE COURT: Good morning.

10 MR. LEE: Troy Lee on behalf of Ms. Gonzalez,
11 Your Honor.

12 THE COURT: All right.

13 MR. NGUYEN: And Tim Nguyen, CJA mentee.

14 THE COURT: All right. We're here for a motion to
15 continue. Mr. Lee, do you want to make your motion.

16 MR. LEE: Did you want Ms. Gonzalez to come up as
17 well?

18 THE COURT: No, I'll just hear from you right now.

19 MR. LEE: Okay. So this motion was filed after I had
20 occasion to speak to Ms. Gonzalez. And, then, the other
21 attorney on her other case, who is Mr. Hormel, was in that
22 meeting as well. And, so, at least the plan at that point was
23 to continue the case with a waiver.

24 I know Ms. Gonzalez is objecting today and doesn't
25 want to sign the waiver. Is that correct?

1 THE DEFENDANT: That's correct, Your Honor.

2 MR. LEE: Okay. The request -- in any event, the
3 request is still to set this over. Originally, the request was
4 going to be to set this into March, potentially after her other
5 case that Mr. Hormel is representing her on. And the reason for
6 that is this case, a resolution of this case, or if this case
7 goes to trial, kind of effectively shuts down negotiations on
8 the other case. And Mr. Hormel was in a position where he's
9 still going over discovery, still talking to Ms. Gonzalez about
10 that, and didn't want that to take place.

11 In addition, in this case, I also have the mentee that
12 is appointed on this case. When we had set the trial
13 initially -- and I neglected to tell the court this, but he has
14 vacation for two weeks of December, a substantial period of time
15 in December, and it is when this case is set. I don't think --
16 you know, having two attorneys on this case is obviously better
17 than one attorney, if this was to go to trial. So that's
18 definitely in Ms. Gonzalez's interest.

19 The other reason is we would want -- and we're
20 prepared to now -- I guess, as far as I'm concerned, I'll speak
21 to Mr. Hormel, and, kind of, negotiations haven't worked out in
22 this case. Ms. Gonzalez always wanted us to file a speedy trial
23 motion, as we talked about before. That's actually done. The
24 reason we were holding off on filing anything is, as the
25 government has said --

1 THE COURT: You have the motion ready, but it hasn't
2 been filed?

3 MR. LEE: Right. The filing of that will kind of
4 trigger no more negotiations. So we wanted to flesh that out,
5 especially in a case like this, where Ms. Gonzalez is
6 potentially looking at life, a life sentence. So we would need
7 time to have that motion heard. And, so, the request, I
8 suppose, is to put this into January, with a motion date,
9 appropriate deadlines.

10 THE COURT: So how much time are you requesting with
11 your motion to continue?

12 MR. LEE: I was asking to put it, then, into January,
13 but I don't know the court's schedule. What we would need is a
14 motion date. Some of this is dependent upon the government, as
15 well. I don't know how long they would need to respond to any
16 motions.

17 THE COURT: Okay. So I just want to make sure what
18 you're asking me to do. I understand your client objects, and
19 we'll get to that issue in just a minute. But you want to push
20 the trial that's currently scheduled in December, you want to
21 push it into January?

22 MR. LEE: That's correct. Or February.

23 THE COURT: Or February. And, then, do you want me to
24 schedule a hearing date for your speedy trial motion that hasn't
25 been filed yet? And I understand why.

1 MR. LEE: Yes.

2 THE COURT: Or do you want to wait on that? We can
3 schedule the time, and move it or cancel it, if necessary.

4 MR. LEE: Let me -- do you want me to file -- do you
5 want me to set a motion date?

6 THE DEFENDANT: For the speedy trial?

7 MR. LEE: Speedy trial.

8 THE DEFENDANT: Sure.

9 MR. LEE: I guess at this point, ask the court to set
10 one. As the court said, we could always strike it.

11 THE COURT: Okay. Mr. Garriques, what are your
12 thoughts regarding -- I did see your written response. It
13 appears the government is not objecting to a continuance.

14 MR. GARRIQUES: Well, the government was also
15 expecting -- or wasn't certain if Ms. Gonzalez would join in
16 that. But with what defense counseling is saying, the
17 government would say a trial date either in late -- given that
18 she's not personally agreeing to that, a trial date, instead of
19 March, a trial date towards end of January, early February would
20 be more appropriate, given her opposition. Her separate trial,
21 or case regarding assault, I believe, is set for late February,
22 around the 20th, or -- it's the 25th. So sometime before that.

23 In regards to --

24 THE COURT: You want to set this case before the
25 assault trial?

1 MR. GARRIQUES: It doesn't --

2 THE COURT: I mean, either --

3 MR. GARRIQUES: -- it doesn't really matter, from the
4 government's perspective.

5 THE COURT: Okay.

6 MR. GARRIQUES: The case is -- the evidence isn't
7 necessarily the same.

8 No, it's, given what Mr. Lee is saying about setting
9 it earlier than March, and he had originally requested in March,
10 expecting that she might agree to the continuance. But given
11 that she's not agreeing, it would be better in late January,
12 because it's closer, or early February, depending on the court's
13 schedule, setting a motion schedule as the court has time for
14 that.

15 THE COURT: Okay. How long do you think it will take
16 to try the case if it goes to trial?

17 MR. GARRIQUES: Government would say between -- for
18 the government's case, maybe three days. So add another day or
19 two for defense counsel.

20 THE COURT: A week-long trial, probably, we should
21 plan for.

22 MR. LEE: I was going to say about four days.

23 THE COURT: Okay. And, so, I'll set a trial date, and
24 a pretrial date for the motion. You haven't filed it yet, but
25 you say you prepared it. What does it look like? Is it a

1 motion that would involve testimony, or a motion that's just
2 legal arguments?

3 MR. LEE: It's a legal argument. No testimony needed.

4 THE COURT: Probably half hour to 45 minutes to make
5 your record?

6 MR. LEE: Correct.

7 MR. GARRIQUES: With regard to that, the government --
8 and I'll respond to the basis for continuing the trial, as well,
9 in addition to what Mr. Lee has stated. Ms. Gonzalez has
10 another case pending involving an assault. Even though they're
11 different incidents, as I have looked at the guidelines, and
12 discussed this with defense counsel, the guidelines would be a
13 combined offense level, and, in fact, the outcome of the assault
14 case would affect the guideline in the drug case, and vice
15 versa, because the court has to come up with a combined offense
16 level. Even though that doesn't go to the facts of the case, it
17 ultimately goes to the ultimate penalties that Ms. Gonzalez
18 faces under the guidelines; therefore, they're interrelated in
19 that sense.

20 And Mr. Hormel has advised, on the assault case, that
21 he still needs additional time to meet with Ms. Gonzalez to go
22 over some additional video surveillance from the jail with her
23 personally, and he has not had an opportunity to do that.
24 Therefore, his investigation is not complete in that case.
25 Therefore, he's not able to make an accurate assessment as to

1 whether or not she should go to trial in that case, or either
2 case. And, obviously, both counsel have been in discussions
3 about that.

4 So in that sense, the government believes that, for
5 effective defense preparation, for the fact that Mr. Nguyen is
6 unavailable in December, and the ultimate impact, the combined
7 impact of both cases that both counsel jointly need to
8 investigate, there is a basis to continue the current trial date
9 in early December to either late January or early February, and
10 that the court, in its order, written order, should find that
11 the ends of justice outweigh the defendant's and the public's
12 interest in a speedy trial. And that's 18 U.S.C. 3161, based on
13 effective defense preparation.

14 And in regard to the motions, part of that Mr. Lee
15 mentioned, and had come up before about negotiations, what have
16 you, the primary interest is the government needs to know, are
17 we going to trial or not, and if so, we need a sufficient amount
18 of time to prepare for trial. And that is tangential to whether
19 or not the defendant is going to agree to the continuance or
20 not, to know whether the government has to preparing for trial.

21 THE COURT: Right.

22 MR. GARRIQUES: And in terms of a motions schedule, I
23 believe, to give the defense opportunity to further discuss
24 where they're going with evidence in the case, in both cases,
25 and come to that conclusion, to allow Mr. Hormel some more time

1 to figure that out with his client on the other case, and then
2 to consult with Mr. Lee, would be appropriate. Therefore, a
3 motions hearing, it's early November now, either mid to late
4 December or early January for a motions hearing, perhaps, or mid
5 January for a motions hearing.

6 THE COURT: Is the mere filing of the motion going to
7 impact the negotiations? I can't get involved in negotiations,
8 but I just want to know what may lead to something else.

9 MR. GARRIQUES: The government -- I mean, as is right
10 now, we're four weeks away from a trial date. The government
11 needs to advise witnesses. And the issue is preparation for
12 trial. And the government needs to know if we're going to trial
13 or not. So that's the key issue that the government is looking
14 at, when is the trial date that the defense is agreeing to or
15 requesting.

16 THE COURT: What I'm hearing, I think both sides need
17 some more time on this case itself. And Mr. Lee has made his
18 record, and, Mr. Garriques, you've made your record. And you
19 both need some certainty in terms of how this case is going to
20 proceed, and I -- and I agree you both need some certainty. So
21 we'll get that worked out today.

22 What I'm thinking of doing is setting a trial date
23 that you can both plan for, and a pretrial hearing that, if you
24 proceed with a motion on the speedy trial issue, we'll have that
25 set today as well. Of course, if either of you need more time

1 for that, or the attorneys -- and I know, Mr. Garriques, you're
2 on the other case as well, and Mr. Hormel is the defense
3 attorney on that case. But if that other case drives the
4 necessity of a continuance or that pretrial hearing, then we can
5 deal with that at the time. But when we leave court today, I
6 want you both to have a trial date for this case, and a pretrial
7 hearing for the potential pretrial motion that may or may not be
8 filed.

9 MR. GARRIQUES: That makes sense.

10 THE COURT: Is that what I'm hearing?

11 MR. GARRIQUES: Yes, Your Honor.

12 THE COURT: Okay. So let's talk to Ms. Gonzalez just
13 briefly. And, Ms. Gonzalez, you can stay where you are, but
14 would you please stand up.

15 Your attorneys -- and we've gone through this before.
16 You've had other attorneys, but now you have these two
17 attorneys, who are doing their best to defend you, and to get
18 ready to do that because of the nature of the charges and the
19 consequences if you're found guilty. And they're very aware of
20 that, and they want to do their best job to help you, not only
21 to go trial, if that's what happens, but also to make some
22 decisions about whether you should go to trial or not. And
23 those are decisions that only you can make, with the assistance
24 of your lawyers. But your lawyers need some more time to help
25 you make those decisions.

1 Do you understand the nature of the request being made
2 by your attorneys?

3 THE DEFENDANT: I do.

4 THE COURT: And do you agree with that request?

5 THE DEFENDANT: No.

6 THE COURT: Can you explain why.

7 THE DEFENDANT: I don't feel like he needs any more
8 time in this case, because it's not too complicated, as
9 Mr. Hormel's case. I understand why Mr. Hormel may need more
10 time, because there's more evidence, or more co-defendants, or
11 whatnot, you know, whatever he needs to look into. But this
12 case is pretty simple. It's just me, myself. I don't
13 understand why it's been taking so long for me to get, get
14 sentenced, or whatever it is, you know.

15 THE COURT: I can't sentence you until you're found
16 guilty, and I can't -- and you can't be found guilty until you
17 have a trial or until you plead guilty. And neither of those
18 things have happened. You've had a couple of attorneys, at
19 least one before Mr. Lee. I can look at the record and answer
20 that question, but I know at least one, and now Mr. Lee. And
21 both attorneys are very good attorneys, Mr. Lee, Mr. Nguyen, and
22 the one that represented you before.

23 THE DEFENDANT: Right.

24 THE COURT: But I'm not trying to argue with you to
25 agree or not agree. I'm just explaining to you what's going on

1 from what I'm hearing. So that's what's happening. You have
2 the right to agree to it, or not agree to it. I just want to
3 know why you don't agree to it. So did you explain your
4 position completely to me? That's fine if you did. Or if you
5 have anything else you'd like to say, you can.

6 THE DEFENDANT: I had a good argument, but...

7 THE COURT: Okay. Did I interrupt you?

8 THE DEFENDANT: No, I think I kind of forgot it now.
9 But I just want this to be done and over with.

10 THE COURT: Understood. All right. You can have a
11 seat again. Thank you.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Lee, I meant to ask you, in your
14 motion, which I was looking at while you made your record, you
15 indicated there's some thought that your client -- or you made a
16 suggestion that your client is looking at hiring her own
17 attorney, which would -- not using your services. Is that still
18 under consideration?

19 MR. LEE: Potentially.

20 THE COURT: Okay.

21 MR. LEE: Without kind of going into what we spoke
22 about --

23 THE COURT: You don't need to.

24 MR. LEE: -- I know there's the name of an attorney
25 that was thrown out there. There was some communication there.

1 I know that attorney was on vacation, at least for a while, and
2 might be back now. Ultimately, that was one of the, at least,
3 bases for continuing. If another attorney is coming on board,
4 if that ends up happening, he's going to ask for a continuance,
5 and he wouldn't be prepared at the trial date that's set.

6 THE COURT: So it's still a possibility?

7 MR. LEE: It's a possibility, yes.

8 THE COURT: You don't have to commit. And your client
9 has the right to do what she would like to do.

10 MR. LEE: I think it's --

11 THE COURT: But it does weigh. It's a factor for me
12 to consider in this request.

13 MR. LEE: Well, even -- I guess, typically, even if
14 somebody doesn't have outright have the funds or end up hiring
15 an attorney, it's always good sometimes to get second opinions.
16 And I know attorneys are also willing to kind of do that and
17 talk to the attorneys on board, at least. So in that sense, I
18 guess I welcome those types of things.

19 THE COURT: Second opinions for legal and medical
20 issues are always good ideas.

21 MR. LEE: Right.

22 THE COURT: And that's fine.

23 All right. Ms. Gonzalez, I understand the nature of
24 your objection. You have consistently indicated that you object
25 to continuances, and I respect your thoughts on that. However,

1 I need to also consider the issues that your attorneys bring to
2 me, and they have. They've made a good job. They need time.
3 They can only do an effective job, which is what we want them to
4 do, what you want them to do, and what the court wants them to
5 do, they can only do that job if they have enough time to get it
6 done. And your attorney here is asking for more time for
7 various reasons which he's explained.

8 So I will grant the motion over your objection. I
9 don't need a speedy trial waiver, and, so, I won't ask for one,
10 because you've indicated you wouldn't sign one.

11 But I will include the appropriate language,
12 Mr. Garriques, in the written order, that the needs of justice
13 outweigh the defendant's objections. And, so, a continuance
14 will be granted.

15 So let's look at some dates. First, let's schedule a
16 trial date. And January is pretty taken up. I mean, to put
17 anything in January is -- would likely lead to another
18 continuance because of a case that Mr. Hanlon has. So I'm
19 thinking first of February, first part of February.

20 MR. LEE: I'm fine with that. But I believe the other
21 case is scheduled for March, sometime in March, right?

22 MR. GARRIQUES: February 25th. The jail case?

23 MR. LEE: Yes.

24 MR. GARRIQUES: It's February 25th. I just looked at
25 that.

1 MR. LEE: Okay. Early February would work.

2 THE COURT: I don't want to do them in the same week.

3 MR. GARRIQUES: Early February would be fine,
4 Your Honor.

5 THE CLERK: How about the first week, February 4th?

6 MR. LEE: That's fine. Thank you.

7 THE COURT: Okay. And that will be -- we'll plan for
8 most of that week if it goes to trial.

9 So let's set a pretrial date. Your motion on the
10 speedy trial issue, can we just do that on what would otherwise
11 be a regular pretrial, or do you want a separate hearing?

12 MR. LEE: I don't believe we need a special set. Just
13 at a regular pretrial. And it probably does make sense setting
14 that into January or maybe mid -- maybe even mid January.

15 MR. GARRIQUES: That's fine, Your Honor. Government
16 agrees.

17 THE CLERK: How about as early as January 9th? Is
18 that going to be too early?

19 MR. LEE: It's fine with defense.

20 MR. GARRIQUES: That's fine.

21 THE CLERK: How about January 9th at 1:30?

22 THE COURT: That's fine. Thank you.

23 Okay. So let's talk, though, about that motion.

24 Let's give Mr. Garriques a chance to respond to it. If you do
25 proceed with the motion, I would like to suggest a deadline in

1 the late part of December, so that Mr. Garriques has a chance to
2 review it and respond. The court can make a better decision if
3 I get good briefing from both sides.

4 MR. LEE: And that's fine. I suppose one of the weird
5 nuances of the particular motion is it may incorporate these
6 requests for continuance. So I guess, in that sense, it's
7 almost being raised by Ms. Gonzalez herself. So it's a little
8 different, but...

9 THE COURT: Yes. If I impose a deadline for filing
10 for this motion of Friday, December 14th, Mr. Garriques, that's
11 kind of getting right around the holidays, and people make
12 holiday plans. Is that going to give you the time you would
13 need to respond?

14 MR. LEE: And if I can't, since we already have the
15 motion filed, I'd be willing to e-mail -- before filing, e-mail
16 it over to the government so that they at least have a chance to
17 see how much time it would take.

18 THE COURT: Okay.

19 MR. GARRIQUES: Your Honor, my preference would be to
20 set it perhaps a week earlier, on December 7th.

21 THE COURT: For filing?

22 MR. GARRIQUES: Yes, Your Honor, for filing.

23 THE COURT: That's fine.

24 MR. GARRIQUES: And, then, perhaps response in the
25 ordinary time.

1 THE COURT: Okay. Can you get it filed by the 7th?

2 MR. LEE: We can, yes.

3 THE COURT: Okay. So we'll set a deadline of Friday,
4 December 7th. And I forget what the ordinary time is for a
5 response.

6 MR. GARRIQUES: Seven days.

7 THE COURT: You said seven days?

8 MR. GARRIQUES: Yes, Your Honor.

9 THE COURT: So you'd have your response done by the
10 14th?

11 MR. GARRIQUES: Yes, Your Honor.

12 THE COURT: And you're free to file a response if you
13 want. Try to get it to us a few days before the hearing.

14 Does that take care of all the issues for this case
15 today?

16 MR. LEE: I believe so.

17 MR. GARRIQUES: Yes, Your Honor.

18 THE COURT: All right. Ms. Gonzalez, any questions?
19 Do you understand what we're doing?

20 THE DEFENDANT: I do.

21 THE COURT: All right.

22 MR. GARRIQUES: And there was one thing the court
23 asked about, since Ms. Gonzalez is here, about her other case.
24 And at her prior hearing, the court had asked for an update on
25 status of the co-defendants in that case. And I would just

1 apprise the court that there's no change in status as to the
2 other two co-defendants that have not yet appeared in federal
3 court.

4 THE COURT: Okay. Thank you for reminding me of that.

5 MR. GARRIQUES: Yes, Your Honor.

6 THE COURT: Anything else?

7 MR. GARRIQUES: No, that's it. Thank you.

8 THE COURT: Thank you.

9 THE DEFENDANT: Thank you, Your Honor.

10 (ADJOURNMENT AT 11:00 A.M.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

2
3
4
5 I, LYNETTE WALTERS, Registered Professional Rep
6 Certified Realtime Reporter and Certified Court Reporter;

8 That the foregoing transcript, Pages 1 through 19,
9 contains a full, true, complete and accurate transcription of my
10 shorthand notes of all requested matters held in the foregoing
11 captioned case, including all objections and exceptions made by
12 counsel, rulings by the court, and any and all other matters
13 relevant to this case.

14 DATED this 14th day of January, 2020.

15

16

17

18

19

20

21

22

23

24

25

s/ Lynette Walters
LYNETTE WALTERS, RPR, CRR, CCR
CCR NO. 2230

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 09, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEAN F. McAVOY, CLERK

UNITED STATES OF AMERICA,
Plaintiff,
v.
MARIA ANDREA GONZALEZ,
Defendant.

No. 1:18-cr-02005-SAB

**ORDER GRANTING MOTION
TO CONTINUE**

The Court held a hearing in this matter on November 7, 2018. Troy Lee and Tim Nguyen appeared on behalf of Defendant, who was present in the courtroom, and Ian Garriques appeared on behalf of the Government. Pending before the Court is Defendant's Third Motion to Continue Trial and Pretrial Deadlines, ECF No. 86.

Mr. Lee informs the Court that Defendant needs additional time to prepare for trial, given the status of Defendant's separate¹ criminal case. Additionally, Mr. Lee informs the Court he needs additional time to determine whether to file a pretrial motion to dismiss. The Government does not object to a continuance.

Defendant disagrees with the motion to continue. Defendant does not believe counsel needs additional time to go to trial in this matter.

For the reasons stated on the record, the Court grants Defendant's motion. The Court finds the ends of justice served by taking such action outweigh the interest of the public and the defendant in a speedy trial, and the failure to grant

¹ Case No. 1:18-cr-02039-SAB-1.

1 such a continuance would deny counsel for the defendant reasonable time
2 necessary for effective preparation.

3 **Accordingly, IT IS HEREBY ORDERED:**

4 1. Defendant's Motion to Continue Trial and Pretrial Dates, ECF No. 86, is
5 **GRANTED.**

6 2. The current trial date of December 10, 2018, is **STRICKEN** and **RESET**
7 for **February 4, 2019**, at **9:00 a.m.**, commencing with a final pretrial conference at
8 8:30 a.m. All hearings shall take place in **Yakima**, Washington.

9 3. A pretrial conference is **set** for **January 9, 2019**, at **10:30 a.m.** in
10 **Yakima**, Washington.

11 4. All pretrial motions shall be filed on or before **December 7, 2018**. Any
12 response shall be filed no later than **December 14, 2018**.

13 5. Pursuant to 18 U.S.C. § 3161(h)(7)(A) and (h)(7)(B)(iv), the time between
14 December 10, 2018, the current trial date, until February 4, 2019, the new trial
15 date, is **DECLARED EXCLUDABLE** for purposes of computing time under the
16 Speedy Trial Act. The Court finds the ends of justice served by taking such action
17 outweigh the best interest of the public and the defendant in a speedy trial, and the
18 failure to grant such a continuance would deny counsel for Defendant reasonable
19 time necessary for effective preparation.

20 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
21 enter this Order and furnish copies to counsel.

22 **DATED** this 9th day of November 2018.



23
24
25
26 Stanley A. Bastian

27 Stanley A. Bastian
28 United States District Judge

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
Plaintiff,) NO. 1:18-CR-2005-SAB
-vs-)
MARIA ANDREA GONZALEZ,) January 9, 2019
Defendant.) Yakima, Washington

VERBATIM REPORT OF PROCEEDINGS
PRETRIAL CONFERENCE/MOTION HEARING

BEFORE THE HONORABLE STANLEY A. BASTIAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: IAN L. GARRIQUES
Assistant United States Attorney
402 E. Yakima Ave., #210
Yakima, WA 98901

FOR THE DEFENDANT: TROY J. LEE
TIM NGUYEN
Attorneys at Law
117 N. Third St.
Yakima, WA 98901

REPORTED BY: Lynette Walters, RPR, CRR, CCR
Official Court Reporter
P. O. Box 845
Yakima, WA 98907
(509) 573-6613

Proceedings reported by mechanical stenography; transcript produced by computer-aided transcription.

1

2 I N D E X

	<u>Page</u>
4 Defendant's Motion to Dismiss 5 Court's Ruling	2
6 Defendant's Motion to Suppress 7 Defendant's Argument 8 Government's Argument	12 60 66

7

8

9

INDEX TO WITNESSES

	<u>Page</u>
11 <u>GOVERNMENT'S WITNESSES:</u>	
12 DREW SHAW	
13 Direct Examination by Mr. Garriques	15
14 Cross-Examination by Mr. Nguyen	51
15 Redirect Examination by Mr. Garriques	59

15

16

17

18

19

20

21

22

23

24

25

1 (JANUARY 9, 2019, 2:37 P.M.)

2 THE COURT: Good afternoon. Please be seated.

3 THE CLERK: The matter now before the court is
4 the United States of America versus Maria Andrea Gonzalez,
5 Case No. 1:18-CR-02005-SAB. This is the time set for pretrial
6 conference/motion hearing.

7 Counsel, please state your presence for the record.

8 MR. GARRIQUES: Good afternoon, Your Honor. Ian
9 Garriques for the United States.

10 THE COURT: Good afternoon.

11 MR. NGUYEN: Your Honor, Tim Nguyen representing
12 Ms. Gonzalez.

13 MR. LEE: And Troy Lee, also representing
14 Ms. Gonzalez.

15 THE COURT: Good afternoon to all three of you.

16 MR. LEE: Good afternoon.

17 THE COURT: We're here for two pretrial motions. One
18 is a motion to dismiss based on Sixth Amendment violations,
19 right to speedy trial, and the other one is a motion to suppress
20 some evidence found in the defendant's purse. Maybe it was her
21 purse, maybe it wasn't her purse, depending on what I'm reading.
22 Those are the two motions.

23 Mr. Garriques, do you expect there will be any
24 testimony today?

25 MR. GARRIQUES: On the motion to suppress, yes.

1 THE COURT: Let's deal with the motion to dismiss
2 first, if that's all right. And I've read everything on both
3 motions, but if we could deal with the motion to dismiss first,
4 and limit argument to just a few minutes apiece, then we can get
5 through it, but I think we'll take most of our time on both
6 motions.

7 MR. LEE: Whoever the court wants to hear from first.

8 THE COURT: The person who filed the motion, which I
9 think would be you.

10 MR. NGUYEN: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MR. NGUYEN: So our argument is mainly in the brief,
13 Your Honor. Just to summarize a bit, Ms. Gonzalez's motion is
14 based on the pretrial delay that her initial attorney did
15 request. She had multiple bail detention motion hearings that
16 were requested. And every time one was requested, another
17 continuance was granted. Whereas, she did request the
18 continuance for the bail motions, her expectations were still to
19 head to trial.

20 So her main complaint, Your Honor, is that it did
21 violate her speedy trial issues when her initial attorney
22 continued the case over her objection to continuation of her
23 trial date, which was, in the beginning, 90 days.

24 In our brief, as I did indicate, we were secondarily
25 appointed. And, so, there's -- we're preserving that issue in

1 case she decides to argue there's a speedy trial issue with our
2 representation of her. For the purpose of this motion, it is
3 the pretrial delay that occurred from the multiple detention
4 hearing requests over her objection. That is the basis of our
5 motion, Your Honor.

6 THE COURT: Okay. Thank you.

7 Mr. Garriques.

8 MR. GARRIQUES: Yes, Your Honor. In brief, there are
9 a couple of issues the court has to look at in terms of speedy
10 trial violations. One is the Speedy Trial Act itself, and then
11 there's the underlying Sixth Amendment right to a speedy trial.
12 And the government, in its response, ECF 100, has clearly laid
13 out that most of the times were excluded because, under the
14 Speedy Trial Act, whenever a motion is filed or pending by the
15 defense or government, even if it's an insignificant motion,
16 discovery, bail, time is automatically excluded.

17 So under the Speedy Trial Act, defendant has a right
18 to be brought to trial within 70 days of the initial -- excuse
19 me, arraignment on the indictment. And in this case --

20 THE COURT: And that's dated from her arraignment,
21 right, not from the date of the indictment?

22 MR. GARRIQUES: Correct. The arraignment on the
23 indictment in Federal Court. In this case I believe it's
24 January 24th of last year for Ms. Gonzalez.

25 And the government has -- I'm not going to go through

1 them, because I laid them out, all the motions that were filed.

2 THE COURT: You did an excellent job of laying them
3 out in the briefing, and I found that very helpful, and I
4 appreciate that.

5 MR. GARRIQUES: Yes, Your Honor.

6 Just noting them, that they are there, the different
7 motions, I believe the only one that was filed requested by the
8 government was the initial motion for detention. But otherwise
9 there were multiple motions for renewed bail hearing, reopen
10 detention, to release discovery for defendant, for an extension
11 of time, motions in limine, motion to withdraw, motion to appeal
12 detention, motion to strike the hearing, motions to continue.
13 And in sum, those came out to be excluding time automatically,
14 bottom of page 9, from January 27th to February 15th, February
15 24th to 25th, August 14th to November 1st, and November 10th to
16 December 6th. And that is a large part of time of the time gap
17 that's automatically excluded under the 70 -- that doesn't count
18 to the 70-day rule.

19 Secondarily, there is a residual exclusion of time
20 when the court makes ends of justice findings that the defendant
21 and the government's right to a speedy trial is outweighed. For
22 example, in this case, effective defense preparation on multiple
23 occasions. Defense counsel articulated the need for defense
24 preparation. And then there were intervening circumstances of
25 the new assault case that required defense counsel to coordinate

1 with additional defense counsel. And all time from April 2nd,
2 2018, through the February 4th trial date was excluded by the
3 court under the ends -- in the interest of justice. In these
4 ends of justice exclusions, the court used the actual language
5 from the Speedy Trial Act that the court finds the ends of
6 justice served by taking such action outweigh the best interests
7 of the public and the defendant in speedy trial, and the failure
8 to grant such continuance would deny counsel for the defendant
9 reasonable time necessary for effective preparation.

10 And the first ends of justice delay had to do with
11 there were additional charges filed, additional discovery, need
12 for more review. And there was a second No. 2 ends of justice
13 time exclusion where defense counsel articulated the filing of a
14 second superseding indictment, potential mandatory life
15 sentence, newly provided discovery, counsel's recent
16 appointment -- that would be current counsel, Mr. Lee and
17 Mr. Nguyen -- and the need to conduct investigation.

18 The third ends of justice time exclusion, which was in
19 July, I believe -- excuse me, September 17th, the court excluded
20 additional time because defendant had been indicted on serious
21 new federal charges involving a sexual assault, potential for
22 mandatory life, the need to discuss the case with the attorney
23 appointed in defendant's case. And then the final ends of
24 justice exclusion dealt with that the new case still needed to
25 be investigated fully by defense counsel, including reviewing

1 jail video with defendant. And that's based on my recollection
2 of that hearing when we were all here, and that the cases would
3 impact each other for guidelines purposes.

4 And, therefore, all the time under the Speedy Trial
5 Act has been covered, and it is -- she has not actually suffered
6 any prejudice, and her trial will commence within 70 days of
7 nonexcludable time under the Speedy Trial Act.

8 Then there's the Sixth Amendment issue. And defendant
9 cited *Barker v. Wingo* factors that have to deal with the length
10 of delay, the reason for delay, timeliness of defendant's
11 assertion, right to speedy trial, and prejudice.

12 The length of the delay, the defense points to the
13 one-year mark. And there is case authority that the one-year
14 mark may give rise to increased questions of whether or not
15 defendant should have the right to a speedy trial. She was
16 arraigned on January 24th. She's having the current trial date
17 set for February 4th, so that's approximately a year.

18 The reason for delay. The court has to look at, based
19 on my reading of the case law, who's basically at fault for the
20 delay, is it the defense, or is it the government. And in this
21 case, the government did not move for the continuances. The
22 defense, whether it be her counsel or her, she noted her
23 objection frequently, but her counsel noted the need to review
24 discovery. There was a motion to withdraw. There was a failure
25 to communicate between her and her counsel. And there was a

1 sealed hearing on that. The defendant repeatedly asked defense
2 counsel to engage in issues that weren't really relevant to
3 actual trial of the case, bringing a bail review motion before
4 the magistrate court. I don't know, maybe not half a dozen
5 times, but multiple times, she's had her bail reviewed there,
6 brought it before this court, and it was put over. There was a
7 motion for discovery to be released to her. And, then,
8 additionally, the final issue was her own misconduct while she
9 was incarcerated at the county jail in June, which resulted in
10 new federal criminal charges, which resulted in her new counsel
11 and current counsel needing to be able to adequately prepare and
12 advise with regard to both cases, considering they would be
13 combined for sentencing, or grouped for sentencing purposes.

14 So, therefore, the government has not been the cause
15 of this delay. The issue is between defendant and her prior
16 counsel and/or current counsel.

17 The third factor is assertion of the right to speedy
18 trial. Defendant has, in a way, somewhat waived that right,
19 because she's asking her defense counsel to file these various
20 motions. And they filed the recent motion to suppress in this
21 case, where she wants to litigate the case before trial, which
22 causes delay. So it's not clear that she has said adamantly
23 from day one let's get to show on the road and be to trial next
24 month.

25 Finally, the prejudice. The court would have to find

1 that there is actual prejudice to the defendant. Defendant here
2 cannot show actual prejudice. There's mere speculation that
3 there might be character witnesses that might not be available
4 anymore, but there's no specific -- any alluded-to witnesses
5 that would say, no, she didn't do it, or that was actually my
6 purse.

7 Additionally, if anything, she cannot be prejudiced
8 because of the First Step Act, which the government noted, in
9 that Congress has effectually eliminated the potential for a
10 mandatory life sentence in her case by changing the laws on
11 prior 851 enhancements, so instead of looking at mandatory life,
12 she's given the windfall of not looking at mandatory life
13 anymore.

14 So the government would argue that there's absolutely
15 no prejudice. If there was any, it was caused by the defense,
16 the defense team and/or the defendant. And assuming arguendo
17 that --

18 THE COURT: Your point is that if we had proceeded in
19 a more speedy fashion, and she was convicted before this new law
20 was passed, she would be looking at mandatory life?

21 MR. GARRIQUES: If she had been convicted and
22 sentenced prior to the new law, she would have been facing life.
23 And given the delay caused by defense, whether it be defense
24 counsel or defendant --

25 THE COURT: Worked to her benefit.

1 MR. GARRIQUES: It was to her benefit.

2 THE COURT: It worked to her benefit.

3 MR. GARRIQUES: Yes, it inured to her benefit,
4 Your Honor.

5 Finally, with regard to speedy trial, the government
6 is not conceding that there was any violation, but even if there
7 were, any indictment should be dismissed without prejudice.
8 That's all I have.

9 THE COURT: Counsel, I don't think I need a reply, but
10 you're certainly welcome to for just a few minutes.

11 MR. NGUYEN: Just a few minutes, I guess.

12 I know we talked about the whole length of the case.
13 I just want to reiterate, just for Ms. Gonzalez's sanity, as
14 well, this motion is strictly, on our point of view, what
15 happened before we were appointed. I did preserve she has
16 issues about continuing because of new charges, and things we
17 needed to review. That issue is preserved in case she has to
18 review that with another attorney.

19 THE COURT: Thank you.

20 I'm going to deny the motion to dismiss. I think,
21 frankly, the briefing from both parties was very good. But the
22 prosecution, the Assistant U.S. Attorney, is right, at each
23 stage when a continuance was granted, that it was either done
24 automatically under the statute because of motions filed, or it
25 was done by the court with its powers of ends of justice. And

1 that's why I was always very careful, it's my practice to always
2 be very careful when a continuance is requested to ask the
3 defendant if they understand the request being made by their
4 attorney, and if they agree with it. Most often they say they
5 understand it, and they agree with it. I do know that in each
6 case I asked those questions of Ms. Gonzalez, she said she
7 understood the request, but she didn't agree with it. And
8 that's fine. She has the right. But this court granted those
9 motions because counsel needed the time, and those motions were
10 granted with the ends of justice.

11 So there's been no violation of the statutory right to
12 speedy trial, and for the reasons as outlined by the government,
13 I believe that the constitutional right has also not been
14 violated. So this case will proceed.

15 Let's talk about the motion to suppress. You
16 indicated there will be some testimony on that?

17 MR. GARRIQUES: Yes, Your Honor. And I don't know how
18 the court wants to handle that, if the court wants to hear the
19 testimony first, before argument. I believe that's usually the
20 case.

21 THE COURT: Usually the case. I think it would be
22 most helpful to me. Let me ask, though, before we call up the
23 witness, I have this police report. I've got a copy of it here.
24 I'm assuming this is probably the officer we're going to hear
25 from. But do the parties stipulate to the facts in this police