

APPENDIX A

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 18 2023

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TRENT DREXEL HOWARD,

Defendant-Appellant.

No. 22-30012

D.C. No.
4:19-cr-06036-SMJ-1

Eastern District of Washington,
Richland

ORDER

Before: NGUYEN and HURWITZ, Circuit Judges, and EZRA,* District Judge.

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

Judge Nguyen voted to deny the petition for rehearing en banc, and Judges Hurwitz and Ezra have so recommended. The petition for rehearing en banc was circulated to the judges of the Court, and no judge requested a vote for en banc consideration. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc, Dkt. 36, is **DENIED**.

* The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TRENT DREXEL HOWARD,
Defendant-Appellant.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2023 U.S. App. LEXIS 9069

No. 22-30012

March 27, 2023** , Submitted, Seattle, Washington

**

April 17, 2023, Filed

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING
THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}Appeal from the United States District Court for the Eastern District of Washington. D.C. No. 4:19-CR-06036-SMJ. Salvador Mendoza, Jr., District Judge, Presiding. United States v. Howard, 2020 U.S. Dist. LEXIS 251034 (E.D. Wash., July 15, 2020)

Disposition:

AFFIRMED.

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Ann Wick, Assistant U.S. Attorney, United States Attorney's Office, Spokane, WA.
For TRENT DREXEL HOWARD, Defendant - Appellant: Jess B. Johnson, Jess Johnson Law, LLC, Atlanta, GA.

Judges: Before: NGUYEN and HURWITZ, Circuit Judges, and EZRA,*** District Judge.

Opinion

MEMORANDUM*

Trent Howard was convicted on child pornography charges. He argues that the district court erred by denying his motion to dismiss for violation of his Sixth Amendment right to a speedy trial and his motion to suppress evidence seized in a search of his residence pursuant to a search warrant. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. Howard was indicted on June 18, 2019, while he was on a work assignment in Kazakhstan. When Howard did not return to the United States as scheduled, the government instituted its first-ever criminal extradition request to Kazakhstan. Extradition was not approved until August 14, 2020, during the peak of the COVID-19 pandemic, and Howard, who had appealed the initial order granting extradition, returned{2023 U.S. App. LEXIS 2} to the United States on November 11, 2020. His trial was originally scheduled for October 4, 2021.

Howard contends that the delay between indictment and the trial date violated the Sixth Amendment's speedy trial guarantee. We hold that the district court, applying the *Barker* factors, correctly found no Sixth Amendment violation. See *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

a. The first *Barker* factor is the length of the delay. Delays approaching one year are presumptively prejudicial. See *United States v. Gregory*, 322 F.3d 1157, 1161-62 (9th Cir. 2003). Here, twenty-eight months elapsed between the indictment and the scheduled trial date. The length of delay thus weighs in Howard's favor.

b. The second factor, the reason for the delay, weighs in the government's favor. The district court held that the government acted reasonably during the pretrial period. Howard failed to return voluntarily, forcing the government to resort to extradition. Given the complexity of arranging an extradition from Kazakhstan, a country with which the United States has no extradition treaty, especially amid a global pandemic, ample evidence supports the district court's conclusion.

c. The third *Barker* factor, the timing of the defendant's assertion of his speedy trial right, weighs in favor of the government. Howard obtained American counsel no later than June {2023 U.S. App. LEXIS 3} 27, 2019 and was aware of his indictment by September 14, 2019, but did not assert his speedy trial rights until June 10, 2020.

d. The fourth *Barker* factor, actual prejudice, weighs against Howard. We, like the district court, are "sympathetic to the anxiety and concern [Howard] must have suffered while detained in a foreign, non-English speaking jurisdiction during a global pandemic." See *Barker*, 407 U.S. at 532 (setting forth the interests of defendants to consider in assessing prejudice). Nonetheless, we agree that Howard "failed to make the requisite showing of actual prejudice" because he provided no evidence that the pretrial incarceration impaired his ability to prepare a defense, nor evidence that the incarceration was oppressive.

2. The district court also did not err by denying Howard's motion to suppress. It correctly found that several typographical errors in the affidavit supporting the application for a warrant, while "sloppy," did not affect the showing of probable cause. The particularized description of the single-source pornography downloads from Howard's IP address was sufficient to establish probable cause. See *United States v. Schesso*, 730 F.3d 1040, 1045-46 (9th Cir. 2013). Moreover, the affiant's observation, based on his experience in law enforcement, {2023 U.S. App. LEXIS 4} that child pornography offenders typically retain the illicit materials for years provided "good reason" to believe that the items to be seized would still be on the premises, even though five months passed between the January 5, 2019 download and the execution of the search warrant. *United States v. Lacy*, 119 F.3d 742, 745-46 (9th Cir. 1997).

3. Finally, we affirm the district court's denial of a *Franks* hearing. A defendant seeking a *Franks* hearing must (1) allege specifically which portions of the warrant affidavit are claimed to be false; (2) allege that the false statements or omissions were deliberately or recklessly made; (3) make a detailed offer of proof, including affidavits, to accompany the allegations; (4) challenge the veracity of only the affiant; and (5) show that the challenged statements are necessary to find probable cause. *United States v. DiCesare*, 765 F.2d 890, 894-95 (9th Cir. 1985). Howard made only conclusory allegations that the typographical errors were deliberate or reckless and did not adequately explain why excision of the errors would defeat probable cause. See *Franks v. Delaware*, 438 U.S. 154, 156, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

AFFIRMED.

APPENDIX B

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

Sep 17, 2021

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 4:19-cr-06036-SMJ-1

Plaintiff,

v.

TRENT DREXEL HOWARD,

Defendant.

**ORDER DENYING
DEFENDANT'S AMENDED
MOTION TO DISMISS
INDICTMENTS FOR VIOLATION
OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A
SPEEDY TRIAL**

After Defendant was indicted for domestic child pornography offenses, he was arrested in Kazakhstan and eventually extradited to the United States. On June 10, 2020, while still detained in Kazakhstan, Defendant filed a motion to dismiss alleging a violation of his Sixth Amendment right to a speedy trial. ECF No. 20. The Court held Defendant's motion in abeyance pending his extradition. ECF No. 26. Once back in the United States, Defendant filed an amended motion to dismiss again asserting that his speedy trial rights were violated. ECF No. 66. The Court held two hearings on the motion and heard oral argument and witness testimony. After the second hearing, the Court orally denied Defendant's motion. This Order

**ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL – 1**

ER-0002

1 memorializes and supplements the Court's oral ruling.

2 **BACKGROUND**

3 On June 5, 2019, federal agents executed a search warrant for evidence of
4 child pornography violations at Defendant's residence in West Richland,
5 Washington. ECF No. 67-4 ¶ 16. At that time, Defendant was working in Nur-
6 Sultan, Kazakhstan on his regular work rotation. *Id.* Defendant, through his wife,
7 became aware of the search and the child pornography investigation. ECF No. 66-2.
8 On the day of the search, Defendant spoke with FBI Special Agent James Dallman
9 ("SA Dallman") by phone and inquired whether he needed to return to the United
10 States. *Id.* SA Dallman advised that child pornography investigations take time, and
11 recommended Defendant "live his life as normal." *Id.*

12 Thereafter, between June 13, 2019, and June 20, 2019, Defendant—while still
13 in Kazakhstan—exchanged a series of emails with SA Dallman in which he
14 promised to return home "next Tuesday" and requested SA Dallman refrain from
15 speaking with others about the case before first talking to him. ECF Nos. 66-4 & 66-
16 5.

17 On June 18, 2019, a federal grand jury indicted Defendant on charges of
18 receipt, distribution, possession, and attempted production of child pornography.
19 ECF No. 1. The Indictment was originally sealed, and it was not unsealed until
20 approximately two weeks before Defendant was apprehended in Kazakhstan. ECF

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL - 2

ER-0003

1 No. 10. There was no evidence presented showing that the Defendant was aware
2 of the indictment.

3 According to Defendant's wife, Defendant's employer then arranged several
4 flights to the United States for Defendant between June 25, 2019, and July 15, 2019.
5 ECF No. 73-2 ¶ 24. Defendant missed all of them, claiming he overslept (twice)
6 and injured his foot. *Id.*

7 Working in conjunction with the United States Attorney's Office for the
8 Eastern District of Washington, the FBI Legal Attaché Nur-Sultan Office,
9 International Criminal Police Organization (INTERPOL), and the FBI Seattle
10 Office submitted an INTERPOL Red Notice¹ for Defendant's arrest, which was
11 published on September 5, 2019. *Id.* ¶ 27.

12 On September 12, 2019, Defendant was arrested at his hotel in Nur-Sultan,
13 Kazakhstan by Kazakh Ministry of Internal Affairs Officers. *Id.* Two days later, on
14 September 14, 2019, Defendant appeared before a Kazakh court in Nur-Sultan and
15 was ordered detained for forty days pending an extradition request from the United
16 States. *Id.* ¶ 29.

17 Over the next fourteen months, Defendant was detained in a Kazakhstan
18

19 ¹ An INTERPOL Red Notice is a request that "any nation where [a] fugitive might
20 be found detain the fugitive pending an extradition request from the United States."
ECF No. 73-4 ¶ 6 n. 1.

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
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AMENDMENT RIGHT TO A SPEEDY TRIAL - 3

ER-0004

1 detention facility before he was eventually extradited and transported back to the
2 United States on November 11, 2020. ECF No. 111 at 9. The Court details the
3 efforts of the United States Attorney's Office ("Government") during this period
4 below.

5 **A. Extradition Timeline**

6 The day after Defendant's arrest, the Government submitted a draft affidavit to
7 Department of Justice Office of International Affairs ("OIA"). *Id.* at 5. On
8 September 23, 2019, the Government submitted final documents to OIA for
9 inclusion in the extradition package. *Id.* Less than two weeks later, on October 4,
10 2019, the United States Embassy presented the formal extradition request to
11 Kazakhstan.² *Id.* at 6. *Id.* at 6.

12 On November 7, 2019, the U.S. Embassy received a request for diplomatic
13 assurances from the Kazakh government. ECF No. 111-1 ¶ 4. One of the requests,
14 described as the "rule of specialty," asked the United States to declare that it would
15 only prosecute Defendant for the crimes for which his extradition was granted. *Id.*

16 **1. Additional Victims and Superseding Indictment**

17 Approximately one week after receiving the request for assurances, the
18

19 ² Shortly after the extradition request was submitted to the Kazakh government, the
20 Kazakh court extended Defendant's detention for an additional twelve months,
pending an extradition decision.

1 Government notified OIA it had identified additional victims and was conducting
2 further investigation. *Id.* ¶ 6. The next day, FBI Agents working in Kazakhstan
3 advised that the Kazakh government would wait for the issuance of assurances until
4 after the anticipated superseding indictment was filed. *Id.* ¶ 8. Over the next
5 approximately one and a half months, additional victims were identified, and on
6 January 7, 2020, a federal grand jury returned a superseding indictment charging
7 eleven additional offenses. *Id.* ¶ 10; *see also* ECF No. 14.

8 **2. Supplemental Extradition Packet**

9 After the superseding indictment was returned, the Government needed to
10 supplement the original extradition request to present the additional charges in order
11 to satisfy Kazakhstan's request for the rule of specialty request. *Id.* ¶ 11. By January
12 30, 2020, the Government submitted an initial draft of the supplemental
13 documentation to OIA. *Id.* ¶ 13. On February 11, 2020, OIA returned the
14 documentation to the Government and requested additional factual information. *Id.*

15 Approximately one month later, on March 13, 2020, the Government
16 returned the revised supplemental documentation to OIA. *Id.* ¶ 14. Thereafter, the
17 revised documents sat with OIA for just short of two months before it sent the
18 documents to the Government for execution. *Id.* On May 20, 2020, the Government
19 sent the executed supplemental extradition documents back to OIA. *Id.* ¶ 15. After
20 translation and further review, OIA sent the supplemental documentation to the

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
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ER-0006

1 United States Department of State on July 2, 2020. *Id.* ¶ 16.

2 The Department of State received final clearance from OIA regarding the
3 requested assurances on August 4, 2020. *Id.* ¶ 19. On August 11, 2020, the
4 supplemental extradition request—including the requested assurances—was
5 formally presented to the Kazakh Government. *Id.* ¶ 20. Kazakhstan granted the
6 United States' extradition request on August 14, 2020. ECF No. 111-1 at 11.

7 **3. Defendant's Appeal and After**

8 On August 28, 2020, Defendant appealed the extradition decision to the Supreme
9 Court of Kazakhstan. ECF No. 111-1 at 12. The translated decision reveals that
10 Defendant's extradition was affirmed on September 25, 2020. *Id.* at 10–12. On
11 November 11, 2020, after addressing what the Government describes as “logistical
12 issues” due to the COVID-19 pandemic, the United States Marshal Service took
13 custody of Defendant in Nur-Sultan and transported him to the United States on via
14 jet. ECF No. 111 at 9. Defendant appeared before a United States Magistrate in the
15 Eastern District of Washington two days later. ECF No. 37.

16 **LEGAL STANDARD**

17 “In all criminal prosecutions, the accused shall enjoy the right to a speedy . . .
18 trial.” U.S. Const. amend. VI. Courts consider four factors when reviewing
19 violations of the Sixth Amendment right to a speedy trial: “[1] Length of delay, [2]
20 the reason for the delay, [3] the defendant's assertion of his right, and [4] prejudice

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
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ER-0007

1 to the defendant.” *Barker v. Wingo*, 407 U.S. 514, 530 (1972). None of these four
2 factors are necessary to find a defendant’s right to a speedy trial has been violated.
3 *Id.* at 533. Rather, the factors “must be considered together with such other
4 circumstances as may be relevant.” *Id.* When a defendant’s Sixth Amendment right
5 to a speedy trial has been violated, the court must dismiss the action. *Strunk v.*
6 *United States*, 412 U.S. 434, 440 (1973) (quoting *Barker*, 407 U.S. at 522).

7 **DISCUSSION**

8 **A. Waiver**

9 The Government argues that Defendant waived his speedy trials rights by
10 remaining in Kazakhstan after he learned of the child pornography investigation.
11 ECF No. 73 at 9. The Court is not persuaded by this argument.

12 “If the delay can be attributed to [the defendant] himself, he will be deemed to
13 have waived his speedy trial rights entirely.” *United States v. Manning*, 56 F.3d
14 1188, 1195 (9th Cir. 1995); *see also United States v. Sandoval*, 990 F.2d 481, 483
15 (9th Cir. 1993) (“When the defendant seeks to ‘avoid detection by American
16 authorities’ and any post-indictment delay can be attributed to him, he waives the
17 right to a speedy trial.”). If a defendant takes “affirmative steps to elude law
18 enforcement,” a court should find waiver, and an analysis of the *Barker* factors is
19 not necessary. *United States v. Aguirre*, 994 F.2d 1454, 1457 n. 5 (9th Cir. 1993).
20 With respect to extradition, a defendant “cannot avoid a speedy trial by forcing the

ORDER DENYING DEFENDANT’S AMENDED MOTION TO DISMISS
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ER-0008

1 government to run the gauntlet of obtaining formal extradition and then complain
2 about the delay that he has caused by refusing to return voluntarily to the United
3 States.” *United States v. Manning*, 56 F.3d 1188, 1195 (9th Cir. 1995).

4 This is not a case where the Court can say Defendant affirmatively eluded law
5 enforcement or otherwise forced the Government’s hand in obtaining formal
6 extradition. The FBI agent overseeing the investigation, SA Dallman, explicitly told
7 Defendant that he was free to remain in Kazakhstan pending indictment. ECF No.
8 66-2. All the more troubling to the Court is that SA Dallman advised as much *in*
9 *response to* Defendant’s inquiry regarding whether he needed to return to the United
10 States. *Id.* And the Government conceded at oral argument that there is no evidence
11 showing that Defendant ever learned of his indictment before his arrest. The
12 Government chose to seal the indictment for the vast majority of the time Defendant
13 was in Kazakhstan before his arrest. *See* ECF No. 10. While that may have been a
14 wise tactical decision, the Government cannot turn around and charge Defendant
15 with knowledge of the indictment without any supporting evidence. Accordingly,
16 Defendant did not waive his right to a speedy trial and an analysis of the *Barker*
17 factors is necessary.

18 **B. *Barker* Factors**

19 **1. Length of Delay**

20 Defendant argues that the length of delay in his case is presumptively

ORDER DENYING DEFENDANT’S AMENDED MOTION TO DISMISS
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ER-0009

1 prejudicial and favors dismissal. ECF No. 66 at 10–11. The Court agrees.

2 The length of delay is a threshold issue and “is measured from the time of the
3 indictment to the time of trial.” *United States v. Gregory*, 322 F.3d 1157, 1161–62
4 (9th Cir. 2003). The length of tolerable delay depends on the complexity of the
5 alleged crime. *Barker*, 407 U.S. at 530–31. Nonetheless, “delays approaching one
6 year are presumptively prejudicial.” *Id.*; *see also Doggett v. United States*, 505 U.S.
7 647, 652 n. 1 (1992).

8 The Government argues that because Defendant’s extradition from
9 Kazakhstan was novel and complex, the length of delay is not “sufficiently lengthy”
10 to compel analysis of the remaining *Barker* factors. ECF No. 73 at 12. The Court
11 declines to credit this argument and instead finds that any issues arising from the
12 complexity of Defendant’s extradition are better analyzed under the second *Barker*
13 factor—the reason for delay. Because Defendant’s trial is currently set to start
14 twenty-eight months after the date of his indictment, the length of delay raises a
15 presumption of prejudice and favors dismissal.

16 **2. Reason for Delay**

17 Defendant next argues that delay is attributable to the Government “for every
18 day between the initial indictment and when [Defendant] arrived back on U.S. soil.”
19 ECF No. 66 at 13. The Government submits that it “acted diligently overall” in
20 obtaining Defendant’s extradition. ECF No. 73 at 9. The Court agrees with the

ORDER DENYING DEFENDANT’S AMENDED MOTION TO DISMISS
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ER-0010

1 Government and concludes that the reason for delay factor weighs against
2 Defendant's speedy trial challenge.

3 The second factor, the reason for delay, is “[t]he flag all litigants seek to
4 capture.” *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986). Because the
5 prosecutor has “a constitutional obligation to try the defendant in a timely manner,”
6 the Government carries the burden of explaining pretrial delay. *McNeely v. Blanas*,
7 336 F.3d 822, 826–27 (9th Cir. 2003). If the Government can show “it proceeded
8 with reasonable diligence,” the defendant’s claim ordinarily cannot succeed absent
9 a showing of actual prejudice. *United States v. Alexander*, 817 F.3d 1178, 1182 (9th
10 Cir. 2016). In contrast, courts will presume prejudice where the Government’s delay
11 was intentional or negligent. *Id.*

12 Before delving further into its analysis, the Court pauses for a moment to
13 situate this case. While extradition cases are not infrequent, Defendant was the first,
14 and to date the only, United States citizen ever extradited from Kazakhstan—a
15 country that does not have an extradition treaty with the United States. ECF No. 66–
16 13 ¶ 7. Additionally, documents pertaining to Defendant’s extradition had to be
17 translated into Russian. *See, e.g., id.* ¶ 8. Despite these barriers, the Government
18 extradited Defendant approximately fourteen months after his arrest. Further, the
19 Government accomplished this task at the onset of a once in a lifetime global
20 pandemic. *Id.* ¶ 15. The Court considers the second factor with this context in mind.

ORDER DENYING DEFENDANT’S AMENDED MOTION TO DISMISS
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AMENDMENT RIGHT TO A SPEEDY TRIAL – 10

ER-0011

1 The delay Defendant complains of can be broken up into three distinct time
2 periods: first, the date Defendant was indicted to the date of his arrest; second, the
3 date Defendant was arrested to the date Kazakhstan granted Defendant's
4 extradition; and third, the date extradition was granted to the date Defendant arrived
5 back in the United States. The Court analyzes each in turn.

6 i. First Time Period (June 18, 2019–September 12, 2019)

7 The Court finds the Government acted with reasonable diligence between the
8 date Defendant was indicted and the date he was arrested in Kazakhstan. Defendant
9 was indicted on June 18, 2019. ECF No. 1. Thereafter, Defendant made several
10 representations to law enforcement and his then-wife—who was in communication
11 with the FBI—that he would be returning home within the month. ECF No. 111 at
12 3. Relying on this information and Defendant's representations, law enforcement
13 planned several arrest operations around Defendant's flight schedule. *Id.*

14 When it became clear Defendant was not going to board a flight home, law
15 enforcement switched course and reached out to FBI Legal Attaché Peter Baldwin
16 for assistance in Kazakhstan less than one month after Defendant's last scheduled
17 flight. *Id.* at 4. Within fifteen days, an INTERPOL Red Notice issued (on September
18 5, 2019), and Defendant was arrested without incident within a week (on September
19 12, 2019). *Id.* at 4–5.

20 While Defendant's conduct in Kazakhstan does not amount to waiver of his

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL – 11

ER-0012

1 speedy trial rights, he certainly cannot play a game of cat-and-mouse with federal
2 law enforcement and then turn around and assign the blame to the Government for
3 the resulting delay. The Court finds that considering the circumstances and
4 Defendant's own conduct, the Government acted with reasonable diligence when it
5 effectuated a foreign arrest in under three months.

6 **ii. Second Time Period (September 12, 2019–August 14, 2020)**

7 The period between Defendant's arrest and the date his extradition was
8 granted is the longest and the most disputed. Defendant's advances two primary
9 complaints: 1) that it took the Government approximately two months to file the
10 superseding indictment; and 2) that it took the Government approximately four
11 months to submit the supplemental extradition request to the Kazakhstan
12 government. ECF No. 109 at 8–9. The Court finds that the Government acted with
13 reasonable diligence at both steps.

14 **a. *Superseding Indictment***

15 The United States Embassy received a request for diplomatic assurances from
16 the Kazakhstan government on November 7, 2019. ECF No. 111-1 ¶ 4. As the Court
17 previously detailed, this request—one of several—asked the United States to assure
18 that Defendant would only be prosecuted for the crimes for which extradition was
19 sought, *i.e.*, the crimes charged in the original indictment. *Id.* To the extent
20 Defendant argues that the Government acted negligently or intentionally by

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
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AMENDMENT RIGHT TO A SPEEDY TRIAL – 12

ER-0013

1 prioritizing its investigation to identify additional victims, this argument fails.

2 The Court is not aware of any precedent requiring the Government to forsake
3 its investigation when faced with a request for a rule of specialty assurance. The
4 Government is simply required to act with reasonable diligence—not to abandon its
5 investigation when credible evidence indicated there were several additional
6 victims.

7 The Government met this burden. Over the course of two months—
8 traditional holiday months, no less—the Government identified eleven additional
9 victims and filed a superseding indictment charging eleven additional counts. *See*
10 ECF No. 14. Meanwhile, the Government was also working to satisfy the
11 Kazakhstan government's request to visit Defendant at his domestic detention site
12 should extradition be granted. ECF No. 111-1 ¶¶ 5–9. Nothing in the record shows
13 that the Government intentionally stalled its investigation or was negligent in its
14 efforts. Rather, the Government moved swiftly to satisfy the Kazakhstan
15 government's request and ensure Defendant faced charges for each alleged victim.

16 ***b. Supplemental Extradition Package***

17 Defendant argues that because the Government was able to submit the
18 original extradition packet in “just over 22 [sic] days,” the fact that it took the
19 Government 134 days to submit the supplemental extradition package should weigh
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ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL – 13

ER-0014

1 against it.³ ECF No. 109 at 8–9. As an initial matter, the Government’s ability to
2 move rapidly at one step is not the sole measuring stick for the Court’s assessment
3 of the Government’s later actions. And despite Defendant’s argument to the
4 contrary, a review of the relevant timeline shows that the Government indeed acted
5 with reasonable diligence in submitting the supplemental extradition package.

6 In a recent extradition case, the Ninth Circuit held that the portion of delay
7 resulting from the 9.6 months it took the prosecutor to submit a draft extradition
8 request to OIA weighed against the Government. *United States v. Alexander*, 817
9 F.3d 1178, 1182 (9th Cir. 2016) (finding that the government failed to sufficiently
10 explain the delay because it was not clear that the entire delay was due to the
11 complexities of the case). This case does not suffer from the same flaws as
12 *Alexander*.

13 The Court cannot conclude, based on the record before it, that the
14 Government acted negligently by taking 134 days to submit the supplemental
15

16 ³ Defendant’s timeline with respect to the first extradition package is incorrect. The
17 Government took eleven days to submit the final extradition package to OIA
(September 12, 2019–September 23, 2019). ECF No. 111 at 5. It was *then* an
18 additional eleven days before the U.S. Embassy presented the extradition request to
the Kazakh government. *Id.* at 6. As to the supplemental extradition package, it took
19 the Government 134 days to submit the final supplemental extradition package to
OIA (January 7, 2020–May 20, 2020). *Id.* at 7. It was then an additional eighty-
20 three days before the U.S. Embassy presented the supplemental package to the
Kazakhstan government. *Id.* at 9.

ORDER DENYING DEFENDANT’S AMENDED MOTION TO DISMISS
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AMENDMENT RIGHT TO A SPEEDY TRIAL – 14

ER-0015

1 extradition package. Defendant's superseding indictment was filed on January 7,
2 2020. ECF No. 14. To satisfy Kazakhstan's request for the rule of specialty
3 assurance, the Government needed to submit a supplemental extradition package to
4 reflect eleven additional charges. The Government submitted an initial draft to OIA
5 on January 30, 2020 (twenty-three days after the superseding indictment was filed).
6 ECF No. 111 at 7. After review, OIA requested additional information from the
7 Government on February 11, 2020, which the Government provided on March 13,
8 2020 (thirty-one days after OIA's request). *Id.* Thereafter, the documents sat with
9 OIA for just short of two months before it sent them back to the Government for
10 execution. *Id.* at 8. The Government then executed the final supplemental
11 extradition package on May 20, 2020—fourteen days after receiving the documents
12 from OIA. *Id.*

13 Review of this timeline shows that the majority of the delay is attributable to
14 OIA—not the Government. While it is unclear why it took OIA nearly two months
15 to review the Government's draft, this delay does not appear unreasonable—
16 especially since it was the beginning of the COVID-19 pandemic. *See United States*
17 *v. Asiegbu*, 2009 WL 413132, at *4 (C.D. Cal. Feb. 17, 2009) (noting that even
18 though the Government could not explain a four-month delay in requesting
19 extradition, the delay did not appear unreasonable). Nor does the 134-day delay, in
20 its entirety, appear unreasonable. Accordingly, the Court cannot say that the

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL - 15

ER-0016

1 Government acted negligently by taking 134 days to draft, edit, and execute a
2 supplemental extradition request that provided for eleven additional criminal
3 charges.

4 **iii. Third Time Period (August 14, 2020–November 11, 2020)**

5 Likewise, the Government acted with reasonable diligence between the date
6 Defendant's extradition was granted and the date Defendant arrived back in the
7 United States. Defendant appealed Kazakhstan's extradition decision, which was
8 affirmed on September 25, 2020. ECF No. 111-1 at 10–12. Thus, any delay during
9 that period is attributable to Defendant. After his extradition was affirmed, it took
10 the Government forty-seven days to coordinate Defendant's return and transport
11 him back to U.S. soil on November 11, 2020. ECF No. 111 at 9. Given the logistical
12 issues involved in coordinating an international prisoner transport, especially during
13 a global pandemic, the Court finds that the Government did not act unreasonably
14 during this period.

15 **3. Assertion of Speedy Trial Right**

16 The third factor, the defendant's assertion of his speedy trial right, "is entitled
17 to strong evidentiary weight in determining whether the defendant is being deprived
18 of the right." *Barker*, 407 U.S. at 531. Defendant did not assert his speedy trial right
19 until June 10, 2020, when he filed his original motion to dismiss. ECF No. 20. Ms.
20 Ingrid Burke—who at the time was a United States Vice Consul Officer working in

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL – 16

ER-0017

1 Kazakhstan—attended Defendant's first detention hearing. *See* ECF No. 100-1. Her
2 official notes unambiguously show that Defendant was aware of his federal charges
3 by September 14, 2019—the date of his first detention hearing. ECF No. 100-1.
4 Yet, Defendant did not assert his speedy trial right until June 10, 2020, despite the
5 opportunity to access to American counsel. Given the delay in asserting his right,
6 this factor weighs against Defendant's speedy trial challenge.

7 **4. Actual Prejudice**

8 “The amount of prejudice a defendant must show is inversely proportional to
9 the length and reason for the delay.” *Alexander*, 817 F.3d 1178, 1183 (9th Cir.
10 2016). The Court has already determined that Defendant is entitled to a presumption
11 of prejudice, but “presumptive prejudice is simply part of the mix of relevant facts,
12 and its importance increases with the length of the delay.” *United States v. Gregory*,
13 322 F.3d 1157, 1162 (9th Cir. 2003) (internal quotation marks omitted).

14 In assessing whether a defendant has suffered prejudice, courts look to the
15 three interests the speedy trial right was designed to protect: (1) preventing
16 oppressive pretrial incarceration; (2) minimizing the defendant's anxiety and
17 concern; and (3) limiting the possibility that the defendant's defense will be
18 impaired. *Barker*, 407 U.S. at 532. Of these interests, “the most serious is the last,
19 because the inability of a defendant adequately to prepare his case skews the
20 fairness of the entire system.” *Id.*

ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL – 17

ER-0018

1 The Court is sympathetic to the anxiety and concern Defendant must have
2 suffered while detained in a foreign, non-English speaking jurisdiction during a
3 global pandemic. But Defendant has failed to make the requisite showing of actual
4 prejudice. See *Gregory*, 322 F.3d at 1162. Defendant has not set forth any non-
5 speculative and non-conclusory argument as to why any delay impaired his ability
6 to prepare a defense for a trial set for almost one year after he returned to U.S. soil.
7 Because Defendant has failed to show any prejudice in preparing a defense, this
8 factor slightly favors the Government.

CONCLUSION

10 On balance, the Court finds that the *Barker* factors weigh against Defendant's
11 speedy trial challenge. Because the Government acted with reasonable diligence in
12 obtaining the first and only extradition of a United States citizen from Kazakhstan
13 during a global pandemic, Defendant delayed in asserting his speedy trial right, and
14 Defendant cannot show actual prejudice, Defendant's speedy trial challenge cannot
15 succeed.

16 | Accordingly, IT IS HEREBY ORDERED:

17 Defendant's Amended Motion to Dismiss Indictments for Violation of
18 Defendant's Sixth Amendment Right to a Speedy Trial, ECF No. 66,
19 is **DENIED**.

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ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL - 18

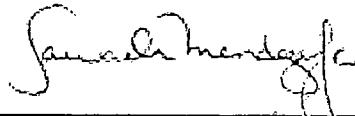
ER-0019

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3 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
4 provide copies to all counsel.

5 **DATED** this 17th day of September 2021.

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8 **SALVADOR MENDOZA, JR.**
United States District Judge

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ORDER DENYING DEFENDANT'S AMENDED MOTION TO DISMISS
INDICTMENTS FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL - 19

ER-0020

APPENDIX C

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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

Jan 10, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 4:19-cr-06036-SMJ-1

Plaintiff,

FINAL ORDER OF FORFEITURE

v.

TRENT DREXEL HOWARD,

Defendant.

Before the Court is the United States' oral Motion for Entry of a Final Order of Forfeiture. Having reviewed the pleadings and file in this matter, the Court finds good cause to grant the motion.

On September 23, 2021, the Court entered the Preliminary Order of Forfeiture, ECF No. 141, forfeiting the following listed assets to the United States:

- Camcorder, Sony, Model: CCD-TRV68, S/N: 180450;
- External HDD Western Digital Model: WDBACX0010BBL, S/N: WXH1E61FVHJ7, 1TB;
- External HDD Toshiba Model: HDTC610XK3B1, S/N: Y2DVTNHT0TSX3, 1TB;

- 1 - External HDD Western Digital Model: WDBGPU0010BBK,
2 S/N: WXD1EA0HM853, 1TB;
- 3 - External HDD Western Digital Model: WDBGPU0010BBK,
4 S/N: WXB1E2568KSJ, 1TB;
- 5 - External HDD Western Digital Model: WDBBEP0010BS,
6 S/N: WX71E33ZMF14, 1TB;
- 7 - Dane-Elec red flash drive, 4GB;
- 8 - Two wireless cameras with no data storage capacity;
- 9 - Smoke alarm with pin camera, no storage;
- 10 - MicroSD card, Make: Patriot, 16GB;
- 11 - MicroSD card, Make: Kingston, 32GB;
- 12 - External HDD, Western Digital Model:
13 WDBACYL5000ABK, S/N: WXE1E11MUX21, 500 GB;
- 14 - External HDD, Western Digital Model: WDBKXH5000ABL,
15 S/N: WXE1E13ZWT26, 500 GB;
- 16 - MicroSD card, 8GB;
- 17 - MicroSD card, Make PNY, 8GB;
- 18 - MicroSD card, Make: SanDisk, 8GB;
- 19 - MicroSD card, Make: SanDisk, 8GB;
- 20 - MicroSD card, Make: Transcend, 2GB;

- 1 - HDD Western Digital Model: WD1600BEVE, S/N:
2 WXC608A71190, 160 GB;
- 3 - HDD, Western Digital, Model: WD400EB-00CPF0, S/N:
4 WCAATE714122, 40 GB; and
- 5 - HDD, Hitachi, Model: HDT725032VLA380, S/N:
6 VFJ200R80DSZWX, 320 GB.

7 The Government published notice of the preliminary order of forfeiture from
8 October 2, 2021, to October 31, 2021. ECF Nos. 155, 155-1, 155-2. Based upon the
9 publication start date, the latest date to file a claim, if direct notice was not received,
10 was December 1, 2021. To date, no claims, whether timely or not, have been
11 received or filed.

12 Under Federal Rules of Criminal Procedure 32.2(b)(4)(A) and (B), the
13 Preliminary Order of Forfeiture became final as to Defendant at sentencing.

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

- 15 1. The United States' oral Motion for Entry of a Final Order of Forfeiture
16 is **GRANTED**.
- 17 2. The Court's September 23, 2021 Preliminary Order of Forfeiture, **ECF**
18 **No. 141**, is **FINAL** as to any and all other persons and entities; and the
19 assets therein, are hereby forfeited to the United States.

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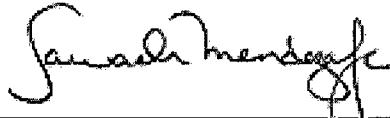
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4 3. The forfeited assets shall be disposed of in accordance with law.

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and

6 provide copies to all counsel.

7 **DATED** this 6th day of January 2022.

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9 SALVADOR MENDOZA, JR.
10 United States District Judge

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