

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13152

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS RAUL VICENTE FONSECA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:19-cr-20844-RNS-1

Before NEWSOM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Luis Raul Vicente Fonseca appeals his conviction for possession and distribution of child pornography. He argues that the district court erred three times: by denying his motion to suppress evidence obtained from a forensic search of his cellphones, by denying his motions to dismiss on speedy trial grounds, and by denying his motion for a new trial based on the government's failure to provide him Jencks Act material. We find no error in the district court's rulings and therefore affirm Fonseca's conviction.

I.

On December 11, 2019, a Customs and Border Protection officer stopped Luis Fonseca at Miami International Airport as he entered the country via a flight from Panama. Department of Homeland Security officials had earlier begun an investigation of Fonseca after receiving a tip from the National Center for Missing and Exploited Children that somebody had downloaded over one thousand files containing suspected child pornography to a Yahoo account registered in his name. Agents searched Fonseca and his luggage, discovering three cellphones.

Fonseca informed the customs officer who took possession of these phones that he was an attorney in Venezuela. But he could not provide any details regarding his law practice, which led the officer to doubt the veracity of this claim. Even so, Homeland

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Security internal directives required customs officers to contact an associate assistant chief counsel or U.S. Attorney before searching information that might be subject to attorney-client privilege. Here though, investigators did not make such contact; they did, however, consult in-house agency counsel about Fonseca's privilege claims.

Invoking its border search authority, a Homeland Security analyst performed an initial forensic search of these cellphones. This initial search was limited to images and video to avoid reviewing any text communications in the phones, which agency counsel had advised was the likeliest place any attorney-client privileged material would be. The search revealed over one thousand child pornography files across the three phones.

Following this initial search, Homeland Security obtained a search warrant and established a privilege filter team in coordination with the U.S. Attorney's Office. No privileged information or any evidence substantiating Fonseca's claim that he was an attorney was ever discovered during the more complete search that followed.

Fonseca was indicted on two counts of possessing and distributing child pornography. Due to numerous trial continuances granted by the district court—some on Fonseca's motion, some on joint motion by Fonseca and the government, and the rest by the court sua sponte—over two years passed between Fonseca's January 2020 arraignment and the beginning of his trial in August 2022. One important factor—in March of 2020,

national and international authorities declared that the outbreak of Covid-19 constituted a pandemic, prompting the closure of many institutions. *See United States v. Dunn*, 83 F.4th 1305, 1307 (11th Cir. 2023). The Chief Judge of the Southern District of Florida issued eleven administrative orders between 2020 and 2021, which automatically continued all jury trials between March 16, 2020, and July 19, 2021. *See* Administrative Order 2020-18, S.D. Fla. (March 13, 2020); Administrative Order 2021-65, S.D. Fla. (July 8, 2021). Some jury trials resumed in a limited fashion between July 19 and September 6, 2021. Administrative Order 2021-65, S.D. Fla. (July 8, 2021). The orders also purported to stop the clock on all Speedy Trial Act calculations during this entire period. *Id.*

Before trial, Fonseca moved to suppress all evidence obtained from the search of his cellphones, arguing that a forensic cellphone search without reasonable suspicion was not justified by the border search exception to the warrant requirement, and that Homeland Security had failed to follow its internal directives and establish a filter team before searching phones that could have contained privileged material. Fonseca also twice moved to dismiss his criminal indictment before trial, arguing that the government had violated the Speedy Trial Act via excessive delay. The district court denied these motions.

After a two-day trial, a jury found Fonseca guilty on both counts. But following the verdict, the government discovered a problem. It had called Special Agent Pablo Llabre, the lead case agent on Fonseca's investigation, to testify regarding the National

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Center for Missing and Exploited Children tip and the contents of Fonseca's phones. Llabre had also earlier testified before the grand jury, but the government had not provided Llabre's grand jury testimony to the defense before trial, as required by the Jencks Act and the district court's scheduling order. The government provided the missing material to the defense after the conclusion of the trial when it discovered the error. Fonseca moved for a new trial on the grounds that the government's failure to turn over Jencks Act material related to Agent Llabre's testimony had prejudiced Fonseca's defense. The district court denied this motion. Fonseca appeals.

II.

We review a denial of a motion to suppress under a mixed standard of review. We review factual findings for clear error, construing the evidence in the light most favorable to the government, and legal conclusions de novo. *United States v. Whyte*, 928 F.3d 1317, 1327 (11th Cir. 2019).

We review whether the government violated a defendant's speedy trial rights under either the Speedy Trial Act or the Sixth Amendment under a mixed standard of review. We review de novo the district court's denial of a motion to dismiss based on a violation of the Speedy Trial Act and for clear error the court's factual determinations as to excludable time. *Dunn*, 83 F.4th at 1314. A district court's decision to grant or deny an ends-of-justice continuance under the Act is reviewed for an abuse of discretion. *Id.* We review a district court's legal conclusions regarding the

constitutional right to a speedy trial under the Sixth Amendment de novo and its factual findings for clear error. *United States v. Oliva*, 909 F.3d 1292, 1301 (11th Cir. 2018).

We review the denial of a motion for a new trial based on an alleged Jencks Act violation for abuse of discretion. *United States v. Naranjo*, 634 F.3d 1198, 1206 (11th Cir. 2011). A new trial is not warranted if the Jencks Act violation is harmless. *United States v. Jones*, 601 F.3d 1247, 1266 (11th Cir. 2010).

III.

A.

Fonseca argues that the district court erred by denying his motion to suppress the evidence obtained from the search of his cellphones at Miami International Airport. He correctly admits that his first argument for suppression—that forensic searches of cellphones at the border still require individualized reasonable suspicion—is foreclosed by this Circuit’s precedent. *See United States v. Touset*, 890 F.3d 1227, 1232–37 (11th Cir. 2018).

Fonseca’s second argument is that the DHS agents searching his phones violated the Fourth Amendment by failing to follow their agency’s privilege procedures after Fonseca informed them that he was an attorney in Venezuela and that the phones might contain privileged material. But as this Court has explained in the due process context, an agency’s failure to follow its own internal operating procedures does not automatically result in a constitutional violation. *See Dacostagomez-Aguilar v. U.S. Att’y Gen.*, 40 F.4th 1312, 1319 (11th Cir. 2022). It is true, as Fonseca argues,

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that we have previously blessed the use of filter teams as sufficiently protective of Fourth Amendment rights. *E.g., In re Sealed Search Warrant & Application for a Warrant by Tel. or Other Reliable Elec. Means*, 11 F.4th 1235 (11th Cir. 2021). But that has little bearing on whether DHS's search of Fonseca's cellphones here was constitutional. Our approval of a particular filter procedure does not imply that it is the only way an agency can constitutionally search materials that may be privileged.

As the district court found, the precautions DHS took during the search of Fonseca's phones likely complied with DHS's internal directives for searches implicating purportedly privileged material. But even if they hadn't, Fonseca has not made any further showing that the government violated his Fourth Amendment rights. The government took adequate precautions to safeguard against disclosing privileged material: the agents consulted with in-house counsel about how to handle the phones given privilege concerns; they limited their initial search to only pictures and videos, not text, to avoid discovering any attorney-client communications; and they obtained a warrant and assembled a filter team before more fully examining the phones' contents. And ultimately, no privileged material was ever found. We thus find no error in the district court's denial of Fonseca's motion to suppress.

B.

1.

Fonseca next argues that he was denied a speedy trial in violation of both the Speedy Trial Act and the Sixth Amendment.

We first consider his claim under the Speedy Trial Act, which provides that the trial of a criminal defendant who pleads not guilty must begin within seventy days of either the indictment being filed or the defendant's first appearance before a judicial officer, whichever is later. 18 U.S.C. § 3161(c)(1). If the defendant is not tried within that time, the district court must grant the defendant's motion to dismiss the indictment. *Id.* § 3162(a)(2).

The Act's seventy-day period may be tolled for certain statutorily enumerated reasons. *See id.* § 3161(h). Relevant here, the duration of a continuance granted by the district court is excluded from the calculation of the seventy days, but only "if the judge granted such continuance on the basis of his findings that the ends of justice served by" the continuance "outweigh the best interest of the public and the defendant in a speedy trial." *Id.* § 3161(h)(7)(A). The Act provides a series of factors for the district court to consider when deciding whether the continuance serves the ends of justice and requires the court to set forth its reasons for its decision in the record. *Id.* § 3161(h)(7)(A)–(B). The district court need not make its findings regarding an ends-of-justice continuance contemporaneously with granting the continuance so long as the findings are on the record by the time the court rules on the defendant's motion to dismiss for a speedy trial violation. *United States v. Ammar*, 842 F.3d 1203, 1207 (11th Cir. 2016).

The Southern District of Florida's administrative orders related to the Covid-19 pandemic purported to toll all Speedy Trial Act periods from March 16, 2020 through September 6, 2021 and

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set forth detailed ends-of-justice findings to that end. *See* Administrative Order 2020-18, S.D. Fla. (March 13, 2020); Administrative Order 2021-65, S.D. Fla. (July 8, 2021). In *United States v. Dunn*, this Court declined to reach the question of whether these blanket, district-wide administrative orders satisfied the Speedy Trial Act on their own. *See Dunn*, 83 F.4th at 1315–16. *Dunn* held instead that the continuances entered by the magistrate judge in that case were sufficient to stop the speedy trial clock because they cited the “fact that all grand jury sessions in the Southern District were temporarily continued due to the COVID-19 pandemic.” *Id.* at 1317. Under the “COVID-19 pandemic circumstances,” district courts “were not required to make more case-specific, ends-of-justice findings, beyond the COVID-19 pandemic-related one, in order to comply with § 3161(h)(7)(A).” *Id.*

Fonseca argues that the district court failed to adequately state its findings why its continuances served the ends of justice on the record. Adding the time represented by those continuances back to the calculation, Fonseca argues, more than two years had run on the speedy trial clock before his trial began. We disagree. True, the district court’s continuance orders did not provide extensive explanations for its ends-of-justice findings. But its orders denying Fonseca’s motions to dismiss on speedy trial grounds explained how its previous continuances served the ends of justice, including by referencing the Southern District’s administrative orders suspending jury trials during the pandemic. Because a court may set out its ends-of-justice findings retroactively in this manner,

the speedy trial clock was properly stopped for the duration of the continuances. *See Ammar*, 842 F.3d at 1207; *Dunn*, 83 F.4th at 1318. There was no Speedy Trial Act violation.¹

2.

Moving on to Fonseca's Sixth Amendment claim, that Amendment guarantees criminal defendants the right to a speedy trial. If a court finds a denial of this constitutional right, it must vacate any conviction and sentence imposed and dismiss the criminal indictment. *United States v. Villarreal*, 613 F.3d 1344, 1349 (11th Cir. 2010). While "compliance with the Speedy Trial Act does not bar Sixth Amendment speedy trial claims, it will be an unusual case in which time limits of the Speedy Trial Act have been met but the Sixth Amendment right to a speedy trial has been violated." *United States v. Schlei*, 122 F.3d 944, 986 (11th Cir. 1997) (alterations adopted and quotation omitted). In *Barker v. Wingo*, the Supreme Court established a four-factor test to determine whether a defendant's constitutional, as opposed to statutory, speedy trial rights were denied. 407 U.S. 514, 530 (1972). We weigh

¹ Fonseca also argues that the district court violated 18 U.S.C. § 3174 by failing to follow its requirements for declaring a judicial emergency, which would have suspended the Speedy Trial Act period for up to 180 days. As the district court explained, the Southern District of Florida never invoked the judicial emergency provisions of 18 U.S.C. § 3174 during the Covid-19 pandemic. Instead, it found good cause under 18 U.S.C. § 3161(h)(7)(A) to toll the speedy trial period. *See United States v. Dunn*, 83 F.4th 1305, 1307–09 (11th Cir. 2023). The district court's continuances thus could not have violated § 3174, because that provision was never active.

(1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) the actual prejudice borne by the defendant. *Id.*; see *Villarreal*, 613 F.3d at 1350.

The first factor of this test establishes a threshold inquiry: unless the defendant establishes that the delay between indictment and trial was “presumptively prejudicial,” the remaining factors will not be considered and his speedy trial claim will fail. *Villarreal*, 613 F.3d at 1350. Here, that standard is met. Because more than one year passed between Fonseca's indictment and his trial, the delay was presumptively prejudicial, and we may proceed to the remaining factors. *Id.* at 1351.

The second factor does not weigh against the government. Fonseca argues that most of the delay was attributable to the Covid-19 pandemic, rather than to any fault of Fonseca. We agree, but the logic cuts both ways—the Covid-19 delay cannot be attributed to any fault of the government either. An unforeseen global health emergency is precisely the kind of “valid reason” out of the government's control that justifies appropriate delay. *Barker*, 407 U.S. at 531.

We have repeatedly found that the third factor—assertion of the speedy trial right—does not weigh against the government when a defendant knows of pending charges against him but delays raising the speedy trial issue until a motion to dismiss. *E.g.*, *United States v. Dunn*, 345 F.3d 1285, 1296 (11th Cir. 2003); *United States v.*

Hill, 622 F.2d 900, 909–10 (5th Cir. 1980).² Here, Fonseca initially waived his speedy trial rights, only re-asserting them for the first time in a motion to dismiss about nineteen months after his arrest and indictment. This alone makes it “difficult for him to prove that he was denied a speedy trial.” *Villarreal*, 613 F.3d at 1355 (alteration adopted and quotation omitted). Worse, Fonseca moved for several continuances both before and after moving to dismiss on speedy trial grounds—hardly the behavior of “a defendant aggressively asserting his desire to be tried promptly.” *United States v. Frye*, 489 F.3d 201, 212 (5th Cir. 2007); see *United States v. Register*, 182 F.3d 820, 828 (11th Cir. 1999). The third factor thus weighs strongly against Fonseca.

Because the first three factors do not uniformly weigh heavily against the government, Fonseca must show actual prejudice on the fourth factor to succeed in showing a violation of his constitutional right to a speedy trial. *Villarreal*, 613 F.3d at 1355. We assess the prejudice suffered by the defendant in light of the three interests protected by the speedy trial right: “(1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired.” *Id.* (quotation omitted). The last interest is the most important. *Id.*

² Decisions by the former Fifth Circuit handed down before October 1, 1981 are binding on this Court. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

Two of these three interests were not impaired by the delay in Fonseca's trial. While he may well have experienced anxiety and concern awaiting his trial on child pornography charges, Fonseca was neither subject to oppressive pretrial incarceration nor hindered from assisting in his own defense. He was released on bond and subject to house arrest for the majority of the pre-trial period: from January 2020 to July 2022. His bond was revoked on July 27, 2022, after the district court discovered that he lied during a plea colloquy related to a proffered guilty plea that was later withdrawn. Fonseca then was incarcerated for about one month before the start of his trial on August 29. This sequence was not so lengthy or oppressive as to implicate prejudice. *See Kennedy v. Superintendent Dallas SCI*, 50 F.4th 377, 384 (3d Cir. 2022); *United States v. Hall*, 551 F.3d 257, 272 (4th Cir. 2009). And Fonseca does not argue at all that the delay hindered his defense—the most important interest when considering actual prejudice. The fourth *Barker* factor thus heavily weighs against Fonseca.

Because the first three *Barker* factors did not each weigh heavily against the government and Fonseca did not prove actual prejudice, we find that Fonseca's constitutional speedy trial rights were not infringed. *See Oliva*, 909 F.3d at 1306.

C.

Finally, Fonseca argues that the government's failure to provide him Jencks Act material warrants a new trial. The Jencks Act provides that, on a defendant's motion, the district court "order the United States to produce any statement" of a witness called by

the United States “in the possession of the United States which relates to the subject matter as to which the witness has testified.” 18 U.S.C. § 3500(b). The purpose of this disclosure requirement is to permit the defense to impeach the government’s witness during cross-examination. *United States v. Prieto*, 505 F.2d 8, 11 (5th Cir. 1974). Both parties agree that the government violated the Act by failing to disclose Agent Llabre’s grand jury testimony before trial. But a mere failure of disclosure is not enough to merit a new trial. Fonseca must also show that he was prejudiced. *United States v. Hamaker*, 455 F.3d 1316, 1327 (11th Cir. 2006).

Fonseca’s main argument is that Llabre used the word “upload” when he described to the grand jury how Fonseca saved child pornography images and videos, but then used the word “share” during his trial testimony. The government’s failure to disclose Llabre’s grand jury testimony, he says, deprived him of the ability to cross-examine Llabre about the difference, if any, between those two words. But Fonseca had access to two other documents which used the word “upload”: an affidavit from Llabre and the report from the National Center for Missing and Exploited Children that tipped off the police that Fonseca might possess child pornography. The grand jury testimony was merely cumulative because Fonseca could have cross-examined Llabre about differences between the two words without it. That means the government’s failure to disclose Jencks Act material was harmless. *See United States v. Valera*, 845 F.2d 923, 928 (11th Cir. 1988).

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The district court correctly found that the government's search of Fonseca's cellphones did not violate the Fourth Amendment, that Fonseca's speedy trial rights were not violated, and that the government's failure to disclose Jencks Act material was harmless. We therefore **AFFIRM** Fonseca's conviction.

**U.S. District Court
Southern District of Florida (Miami)
CRIMINAL DOCKET FOR CASE #: 1:19-cr-20844-RNS-1**

Case title: USA v. Fonseca

Date Filed: 12/19/2019

Magistrate judge case number: 1:19-mj-04012-JB

Date Terminated: 09/15/2022

Assigned to: Judge Robert N. Scola, Jr
Referred to: Magistrate Judge Jonathan
Goodman

Appeals court case number: 22-13152-A
USCA

Defendant (1)

Luis Raul Vicente Fonseca
20770-104/ Spanish
TERMINATED: 09/15/2022

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"APPENDIX B"
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/13/2019	<u>1</u>	COMPLAINT as to Luis Raul Vincente Fonseca (1). (mdc) [1:19-mj-04012-JB] (Entered: 12/16/2019)
12/16/2019		SYSTEM ENTRY - Docket Entry 2 restricted/sealed until further notice. (mdc) [1:19-mj-04012-JB] (Entered: 12/16/2019)
12/16/2019		Arrest of Luis Raul Vincente Fonseca (at) [1:19-mj-04012-JB] (Entered: 12/17/2019)
12/16/2019	<u>3</u>	Minute Order for proceedings held before Ch. Magistrate Judge John J. O'Sullivan: Initial Appearance as to Luis Raul Vincente Fonseca held on 12/16/2019.. Arraignment set for 12/30/2019 AT 10:00 AM in Miami Division before MIA Duty Magistrate. Detention Hearing set for 12/18/2019 AT 10:00 AM in Miami Division before MIA Duty Magistrate. Preliminary Examination set for 12/30/2019 AT 10:00 AM in Miami Division before MIA Duty Magistrate. Report Re: Counsel Hearing set for 12/18/2019 AT 10:00 AM in Miami Division before MIA Duty Magistrate. Spanish Interpreter present. (Digital

		14:12:11) (Signed by Ch. Magistrate Judge John J. O'Sullivan on 12/16/2019). (at) [1:19-mj-04012-JB] (Entered: 12/17/2019)
12/18/2019	<u>4</u>	Minute Entry for proceedings held before Ch. Magistrate Judge John J. O'Sullivan: Status Conference re: RRC & Detention as to Luis Raul Vicente Fonseca held on 12/18/2019 (Detention Hearing re-set for 1/7/2020 10:00 AM in Miami Division before MIA Duty Magistrate., Report Re: Counsel Hearing re-set for 12/30/2019 10:00 AM in Miami Division before MIA Duty Magistrate.) Waived rights to a timely detention hearing. Spanish Interpreter present. (Digital 10:14:25) (tb) [1:19-mj-04012-JB] (Entered: 12/18/2019)
12/19/2019	<u>5</u>	INDICTMENT as to Luis Raul Vicente Fonseca (1) count(s) 1-3. FORFEITURE ALLEGATIONS. (at) (Additional attachment(s) added on 12/20/2019: # <u>1</u> Restricted Unredacted Indictment) (at). (Entered: 12/20/2019)
12/23/2019	<u>6</u>	NOTICE OF ATTORNEY APPEARANCE Nicole Grosnoff appearing for USA. . Attorney Nicole Grosnoff added to party USA(pty:pla). (Grosnoff, Nicole) (Entered: 12/23/2019)
12/30/2019	<u>7</u>	Minute Entry for proceedings held before Magistrate Judge Lisette M. Reid: Status Conference re: RRC/Arraignment as to Luis Raul Vicente Fonseca held on 12/30/2019, (Arraignment re-set for 1/7/2020 10:00 AM in Miami Division before MIA Duty Magistrate., Report Re: Counsel Hearing re-set for 1/7/2020 10:00 AM in Miami Division before MIA Duty Magistrate.). Defendant's request to continue granted/No objections by the government. Spanish Interpreter present. (Digital 10:02:05) (tb) (Entered: 12/30/2019)
01/07/2020	<u>8</u>	NOTICE OF TEMPORARY ATTORNEY APPEARANCE: Armando Hernandez appearing for Luis Raul Vicente Fonseca (br) (Entered: 01/08/2020)
01/07/2020	<u>9</u>	Minute Order for proceedings held before Magistrate Judge Jonathan Goodman: Detention Hearing as to Luis Raul Vicente Fonseca held on 1/7/2020. Witness Agent Leah Ortiz testified. Bond set: Luis Raul Vicente Fonseca (1) \$500,000 PSB & \$100,000 10% w/Nebbia w/co-signers. (Arraignment reset for 1/21/2020 10:00 AM in Miami Division before MIA Duty Magistrate. Report Re: Counsel Hearing reset for 1/21/2020 10:00 AM in Miami Division before MIA Duty Magistrate.). Spanish Interpreter present. (Digital 10:30:54) Signed by Magistrate Judge Jonathan Goodman on 1/7/2020. (br) (Entered: 01/08/2020)
01/07/2020	<u>10</u>	WAIVER of Speedy Trial/Arraignment by Luis Raul Vicente Fonseca (cg1) (Entered: 01/08/2020)
01/21/2020	<u>11</u>	Minute Order for proceedings held before Magistrate Judge Lauren Fleischer Louis: Report Re Counsel Hearing as to Luis Raul Vicente Fonseca held on 1/21/2020. ARRAIGNMENT as to Luis Raul Vicente Fonseca (1) Counts 1-3 held on 1/21/2020. Spanish Interpreter present. (Digital 10:02:20) PAPERLESS STANDING DISCOVERY ORDER: The defendant(s) having been arraigned this date in open Court, it is Ordered that within 14 days of the date of this order that all parties to this action shall review and comply with Southern District of Florida Local Rules 88.10 (Criminal Discovery), and 88.9(c) (Motions in Criminal Cases). Upon a sufficient showing, the Court may at any time, upon a properly filed motion, order that the discovery or inspection provided for by this Standing Order be denied, restricted or deferred, or make such other order as is appropriate. It is expected by the Court, however, that counsel for both sides shall make a good faith effort to comply with the letter and spirit of this Standing Order. It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered

		information or other material within the scope of Local Rule 88.10. Signed by Magistrate Judge Lauren Fleischer Louis on 1/21/2020. (cg1) (Entered: 01/21/2020)
01/21/2020	<u>12</u>	NOTICE OF ATTORNEY APPEARANCE: Armando Hernandez appearing for Luis Raul Vicente Fonseca (cg1) (Entered: 01/21/2020)
01/23/2020	<u>13</u>	First MOTION for Reconsideration <i>pre trial release condition</i> by Luis Raul Vicente Fonseca. Responses due by 2/6/2020 (Hernandez, Armando) (Entered: 01/23/2020)
01/23/2020	<u>14</u>	PAPERLESS ORDER REFERRING <u>13</u> MOTION to Consider Change of Address filed by Luis Raul Vicente Fonseca. Motion is referred to Judge Jonathan Goodman because he set bond and conditions of bond. See docket entry <u>9</u> . Signed by Judge Robert N. Scola, Jr on 1/23/2020. (jh) (Entered: 01/23/2020)
01/24/2020	<u>15</u>	<p>PAPERLESS ORDER denying without prejudice Defendant's <u>13</u> Motion for Reconsideration as to Luis Raul Vicente Fonseca (1).</p> <p>Defendant's motion does not say whether his counsel spoke with Pretrial Services to obtain its position on the requested change in residence, and, if so, the probation officer's position.</p> <p>The motion does not explain <i>why</i> Defendant is seeking to change the residence, nor does it address any practical ramifications which might arise from a change in residence.</p> <p>In addition, Defendant failed to include a proposed order.</p> <p>If Defendant wishes to pursue a change in residence from the one previously approved by the Court, then he shall file an amended motion and resolve the omissions outlined above.</p> <p>Depending on the position of Pretrial Services and the amount of detail in an amended motion, the Undersigned might be able to rule on the motion without a hearing. Signed by Magistrate Judge Jonathan Goodman on 1/24/2020. (JG) (Entered: 01/24/2020)</p>
01/27/2020	<u>16</u>	<p>SCHEDULING ORDER SETTING TRIAL DATE as to Luis Raul Vicente Fonseca. Calendar Call set for 2/25/2020 09:00 AM in Miami Division before Judge Robert N. Scola Jr.. Jury Trial set for 3/2/2020 09:00 AM in Miami Division before Judge Robert N. Scola Jr.. Signed by Judge Robert N. Scola, Jr on 1/27/2020. <i>See attached document for full details.</i> (drz)</p> <p>Pattern Jury Instruction Builder - To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.ca11.uscourts.gov or click here. (Entered: 01/27/2020)</p>
01/27/2020	<u>17</u>	Second MOTION for Reconsideration <i>motion to consider change of address</i> by Luis Raul Vicente Fonseca. Responses due by 2/10/2020 (Attachments: # <u>1</u> Text of Proposed Order) (Hernandez, Armando) (Entered: 01/27/2020)
01/29/2020	<u>18</u>	PAPERLESS ORDER Setting Hearing on Motion <u>17</u> Second MOTION for Reconsideration <i>motion to consider change of address</i> : as to Luis Raul Vicente Fonseca. Motion Hearing set for 2/4/2020 03:00 PM in Miami Division before Magistrate Judge Jonathan Goodman. Signed by Magistrate Judge Jonathan Goodman on 1/29/2020. (tb) (Entered: 01/29/2020)
02/03/2020	<u>19</u>	RESPONSE to Motion by USA as to Luis Raul Vicente Fonseca re <u>17</u> Second MOTION for Reconsideration <i>motion to consider change of address</i> Replies due by 2/10/2020. (Monk, Lacey) (Entered: 02/03/2020)

02/03/2020	<u>20</u>	First RESPONSE to Standing Discovery Order by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 02/03/2020)
02/04/2020	<u>21</u>	Minute Entry for proceedings held before Magistrate Judge Jonathan Goodman: Motion Hearing as to Luis Raul Vicente Fonseca held on 2/4/2020 re <u>17</u> Second MOTION for Reconsideration <i>motion to consider change of address</i> filed by Luis Raul Vicente Fonseca. Motion was granted. Spanish Interpreter present. (Digital 14:59:51) (tb) (Entered: 02/04/2020)
02/04/2020	<u>22</u>	NEBBIA STIPULATION by USA, Luis Raul Vicente Fonseca as to Luis Raul Vicente Fonseca (tb) (Entered: 02/06/2020)
02/04/2020	<u>23</u>	\$500,000 PSB Bond Entered as to Luis Raul Vicente Fonseca Approved by Magistrate Judge Jonathan Goodman. <i>Please see bond image for conditions of release.</i> (tb) (Additional attachment(s) added on 2/7/2020: # <u>1</u> Restricted Bond with 5th Page) (nf). (Entered: 02/06/2020)
02/04/2020	<u>24</u>	\$100,000 10% PSB Bond Entered as to Luis Raul Vicente Fonseca Receipt # FLS100202810. Approved by Magistrate Judge Jonathan Goodman. <i>Please see bond image for conditions of release.</i> (tb) (Additional attachment(s) added on 2/7/2020: # <u>1</u> Restricted Bond with 5th Page) (nf). (Entered: 02/06/2020)
02/11/2020	<u>25</u>	Second RESPONSE to Standing Discovery Order by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 02/11/2020)
02/24/2020	<u>26</u>	First MOTION to Continue Trial by Luis Raul Vicente Fonseca. Responses due by 3/9/2020 (Attachments: # <u>1</u> Text of Proposed Order)(Hernandez, Armando) (Entered: 02/24/2020)
02/24/2020	<u>27</u>	ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 2/24/2020 until 5/11/2020. Granting <u>26</u> First MOTION to Continue Trial. Calendar Call set for 5/5/2020 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 5/11/2020 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 2/24/2020. <i>See attached document for full details.</i> (jh) (Entered: 02/24/2020)
02/25/2020	<u>28</u>	NOTICE <i>Motion allowing Defendant to Sell Property</i> by Luis Raul Vicente Fonseca (Attachments: # <u>1</u> Text of Proposed Order) (Hernandez, Armando) (Entered: 02/25/2020)
02/28/2020	<u>29</u>	ORDER granting <u>28</u> Motion to Allow Defendant to Sell Property in Venezuela filed by Luis Raul Vicente Fonseca. Signed by Judge Robert N. Scola, Jr on 2/26/2020. <i>See attached document for full details.</i> (jh) (Entered: 02/28/2020)
04/08/2020	<u>30</u>	Joint MOTION to Continue Trial by Luis Raul Vicente Fonseca. Responses due by 4/22/2020 (Attachments: # <u>1</u> Text of Proposed Order)(Hernandez, Armando) (Entered: 04/08/2020)
04/08/2020	<u>31</u>	ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 4/8/2020 until 7/20/2020. Granting <u>30</u> Joint Motion to Continue Trial. Calendar Call set for 7/14/2020 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Selection set for 7/20/2020 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 4/8/2020. <i>See attached document for full details.</i> (jh) (Entered: 04/08/2020)
06/23/2020	<u>32</u>	Joint MOTION to Continue Trial by Luis Raul Vicente Fonseca. Responses due by 7/7/2020 (Attachments: # <u>1</u> Text of Proposed Order)(Hernandez, Armando) (Entered: 06/23/2020)

06/23/2020	<u>33</u>	ORDER TO CONTINUE TRIAL - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 06/23/2020 until 10/13/2020. Granting <u>32</u> Joint MOTION to Continue Trial . Calendar Call set for 10/6/2020 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 10/13/2020 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 6/23/2020. <i>See attached document for full details.</i> (drz) Modified on 6/24/2020 (jh). (Entered: 06/24/2020)
07/09/2020		Terminate Hearing as to Luis Raul Vicente Fonseca: jury selection set for 7/20/2020 at 9:00 AM is canceled. See order continuing trial to 10/13/2020 at 9:00 AM <u>33</u> . (jh) (Entered: 07/09/2020)
08/05/2020	<u>34</u>	NOTICE on Forfeiture by USA as to Luis Raul Vicente Fonseca re <u>5</u> Indictment (Attachments: # <u>1</u> Exhibit) (Grosnoff, Nicole) (Entered: 08/05/2020)
09/30/2020	<u>35</u>	Joint MOTION to Continue Trial by Luis Raul Vicente Fonseca. Responses due by 10/14/2020 (Attachments: # <u>1</u> Text of Proposed Order)(Hernandez, Armando) (Entered: 09/30/2020)
10/01/2020	<u>36</u>	ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 9/30/2020 until 2/1/2021. Granting <u>35</u> Joint Motion to Continue Trial. Calendar Call set for 1/26/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 2/1/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 10/1/2020. <i>See attached document for full details.</i> (jh) (Entered: 10/01/2020)
11/19/2020	<u>37</u>	NOTICE of Filing Agreed Order by Luis Raul Vicente Fonseca (Attachments: # <u>1</u> Text of Proposed Order) (Hernandez, Armando) (Entered: 11/19/2020)
11/23/2020	<u>38</u>	AGREED ORDER GRANTING ORE TENUS MOTION TO ALLOW DEFENDANT TO ATTEND THE HOLIDAY WITH THIS FAMILY as to Luis Raul Vicente Fonseca re <u>37</u> Notice (Other) filed by Luis Raul Vicente Fonseca. Signed by Judge Robert N. Scola, Jr on 11/20/2020. <i>See attached document for full details.</i> (drz) (Entered: 11/23/2020)
12/16/2020	<u>39</u>	Defendant's MOTION to Modify Conditions of Release by Luis Raul Vicente Fonseca. Responses due by 12/30/2020 (Attachments: # <u>1</u> Text of Proposed Order)(Hernandez, Armando) (Entered: 12/16/2020)
12/16/2020	40	PAPERLESS ORDER granting <u>39</u> Motion to Modify Conditions of Release as to Luis Raul Vicente Fonseca (1). Defendant is permitted to exit his residence for one hour seven days a week and walk within a radius of 1,000 feet of his residence in order to exercise. U.S. Probation Officer John Carles and AUSA Lacey Monk do not oppose this motion. Signed by Judge Robert N. Scola, Jr on 12/16/2020. (jh) (Entered: 12/16/2020)
12/22/2020	<u>41</u>	ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 10/20/2020 until 4/26/2021. Calendar Call set for 4/20/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 4/26/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 12/22/2020. <i>See attached document for full details.</i> (jh) (Entered: 12/22/2020)
02/18/2021	<u>42</u>	SUPERSEDING INDICTMENT as to Luis Raul Vicente Fonseca (1) count(s) 1s, 2s. (cg1) (Additional attachment(s) added on 2/19/2021: # <u>1</u> Restricted Unredacted Indictment) (ra). (Entered: 02/19/2021)
03/01/2021		Set Hearings as to Luis Raul Vicente Fonseca: Arraignment on Superseding Indictment set for 3/4/2021 10:00 AM in Miami Division before MIA Duty Magistrate. (yha) (Entered: 03/01/2021)

03/04/2021	<u>43</u>	<p>Minute Order for proceedings held before Magistrate Judge Jacqueline Becerra: ARRAIGNMENT SUPERSEDING INDICTMENT as to Luis Raul Vicente Fonseca (1) Count 1s and 2s held on 3/4/2021. Spanish Interpreter present. (Digital JB-03-04-2021-ZOOM-10:53 am)</p> <p>It is ORDERED AND ADJUDGED that pursuant to the Due Process Protections Act, the Court confirms the obligation of the United States to produce all exculpatory and impeachment evidence to the defendant pursuant to <u>Brady v. Maryland</u>, 373 U.S. 83 (1963) and its progeny, and orders it to do so. Failing to do so in a timely manner may result in consequences, including, but not limited to, exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, or sanctions by the Court.</p> <p>PAPERLESS STANDING DISCOVERY ORDER: The defendant(s) having been arraigned this date in open Court, it is Ordered that, within 14 days of the date of this order that all parties to this action shall review and comply with Southern District of Florida Local Rules 88.10 (Criminal Discovery), and 88.9(c) (Motions in Criminal Cases). Upon a sufficient showing, the Court may at any time, upon a properly filed motion, order that the discovery or inspection provided for by this Standing Order be denied, restricted or deferred, or make such other order as is appropriate. It is expected by the Court, however, that counsel for both sides shall make a good faith effort to comply with the letter and spirit of this Standing Order. It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered information or other material within the scope of Local Rule 88.10. Signed by Magistrate Judge Jacqueline Becerra on 3/4/2021. (mdc) Modified on 3/5/2021 (jh). (Entered: 03/05/2021)</p>
04/15/2021	<u>44</u>	<p>ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 4/6/2021 until 7/19/2021. Calendar Call set for 7/13/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 7/19/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 4/14/2021. See attached document for full details. (jh) (Entered: 04/15/2021)</p>
06/07/2021	<u>45</u>	<p>Witness List by Luis Raul Vicente Fonseca (Attachments: # <u>1</u> Exhibit)(Hernandez, Armando) (Entered: 06/07/2021)</p>
06/08/2021	<u>46</u>	<p>Third RESPONSE to Standing Discovery Order by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 06/08/2021)</p>
06/16/2021	<u>47</u>	<p>TRANSCRIPT of Detention Hearing as to Luis Raul Vicente Fonseca held on 1/7/2020 before Magistrate Judge Jonathan Goodman, 1-57 pages, Court Reporter: Bonnie Joy Lewis, 954-985-8875. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/7/2021. Redacted Transcript Deadline set for 7/19/2021. Release of Transcript Restriction set for 9/14/2021. (apz) (Entered: 06/17/2021)</p>
06/18/2021	<u>48</u>	<p>Defendant's MOTION to Suppress all Evidence Obtained from an Illegal Search and Seizure by Luis Raul Vicente Fonseca. (Hernandez, Armando) (Entered: 06/18/2021)</p>
06/21/2021	<u>49</u>	<p>PAPERLESS ORDER SETTING IN-PERSON HEARING on <u>48</u> Defendant's Motion to Suppress all Evidence Obtained from an Illegal Search and Seizure: as to Luis Raul Vicente Fonseca.</p> <p>In-Person Motion Hearing set for 7/12/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami</p>

		<p>Avenue, Courtroom 12-3, 12th floor, Miami, Florida. The Court has reserved two hours for motion hearing.</p> <p>Counsel of record and defendant are required to be present in courtroom 12-3 on the date and time specified herein.</p> <p>Signed by Judge Robert N. Scola, Jr on 6/21/2021. (jh) (Entered: 06/21/2021)</p>
07/01/2021	<u>50</u>	Fourth RESPONSE to Standing Discovery Order by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 07/01/2021)
07/02/2021	<u>51</u>	RESPONSE in Opposition by USA as to Luis Raul Vicente Fonseca re <u>48</u> Defendant's MOTION to Suppress all Evidence Obtained from an Illegal Search and Seizure Replies due by 7/9/2021. (Monk, Lacey) (Entered: 07/03/2021)
07/03/2021	<u>52</u>	NOTICE of Filing Exhibit A to its Response in Opposition to Defendant's Motion to Suppress by USA as to Luis Raul Vicente Fonseca re <u>51</u> Response in Opposition (Attachments: # <u>1</u> Exhibit) (Monk, Lacey) (Entered: 07/03/2021)
07/06/2021	<u>53</u>	MOTION to Continue Trial by USA as to Luis Raul Vicente Fonseca. Responses due by 7/20/2021 (Attachments: # <u>1</u> Text of Proposed Order)(Monk, Lacey) (Entered: 07/06/2021)
07/07/2021	54	PAPERLESS ORDER: The Court orders the Defendant to reply to <u>51</u> the Government's response on or before noon, on Thursday, July 8, 2021 . In particular, the Defendant must address the Government's contention that the facts here are not disputed, thus obviating the need for an evidentiary hearing. If the Defendant disagrees, he must identify which factual issues he believes can only be determined at an evidentiary hearing. Signed by Judge Robert N. Scola, Jr. (kbe) (Entered: 07/07/2021)
07/07/2021	55	<p>SUA SPONTE PAPERLESS ORDER as to Luis Raul Vicente Fonseca re <u>44</u> Order Setting Calendar Call for 7/13/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida.</p> <p>Calendar call will proceed in-person and not by video teleconference. Counsel of record and defendant are required to be present in courtroom 12-3 on the date and time specified.</p> <p>Signed by Judge Robert N. Scola, Jr on 7/7/2021. (jh) (Entered: 07/07/2021)</p>
07/07/2021	<u>56</u>	Witness List by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 07/07/2021)
07/07/2021	<u>57</u>	RESPONSE in Support by Luis Raul Vicente Fonseca re <u>48</u> Defendant's MOTION to Suppress all Evidence Obtained from an Illegal Search and Seizure (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit) (Hernandez, Armando) (Entered: 07/07/2021)
07/07/2021	58	PAPERLESS ORDER: The parties are advised that the previously set 9:00 AM, July 12, 2021, in-person, evidentiary hearing will proceed as scheduled . Signed by Judge Robert N. Scola, Jr. (kbe) (Entered: 07/07/2021)
07/08/2021	<u>59</u>	ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 7/6/2021 until 9/13/2021. Granting <u>53</u> MOTION to Continue Trial. Calendar Call set for 9/7/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 9/13/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 7/7/2021. <i>See attached document for full details.</i> (jh) (Entered: 07/08/2021)

07/11/2021	<u>60</u>	Witness List by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 07/11/2021)
07/12/2021	<u>61</u>	NOTICE of Supplemental Authority of <i>ICE Border Search Policy</i> by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 07/12/2021)
07/12/2021	<u>62</u>	PAPERLESS Minute Entry for proceedings held before Judge Robert N. Scola, Jr: In-Person Motion Hearing as to Luis Raul Vicente Fonseca held on 7/12/2021 re <u>48</u> Defendant's MOTION to Suppress all Evidence Obtained from an Illegal Search and Seizure filed by Luis Raul Vicente Fonseca. Witnesses testified: John T. Occhialini, Homeland Security Investigations; Pablo Llabre, HSI Special Agent; and Luis Raul Vicente Fonseca. Matter taken under advisement. Total time in court: 2 hours and 5 minutes. Spanish Interpreter present. Attorney Appearance(s): AUSA Lacey Elizabeth Monk, AUSA Jessica Obenauf, and Armando Hernandez, Esquire. Court Reporter: Tammy Nestor, 305-523-5148 / Tammy_Nestor@flsd.uscourts.gov. (jh) (Entered: 07/12/2021)
07/12/2021	<u>63</u>	EXHIBIT LIST for hearing held 7/12/2021 re <u>48</u> Motion to Suppress by Luis Raul Vicente Fonseca (jh) (Entered: 07/12/2021)
07/13/2021	<u>64</u>	ORDER denying <u>48</u> Motion to Suppress as to Luis Raul Vicente Fonseca (1). Signed by Judge Robert N. Scola, Jr on 7/13/2021. <i>See attached document for full details.</i> (pes) (Entered: 07/13/2021)
07/16/2021	<u>65</u>	NOTICE of Intent to Introduce Certified Business Records of American Airlines Pursuant to Fed. R. Evid. 902(11) by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 07/16/2021)
07/16/2021	<u>66</u>	NOTICE of Intent to Introduce Certified Business Records of T-Mobile Pursuant to Fed. R. Evid. 902(11) by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 07/16/2021)
07/16/2021	<u>67</u>	Fifth RESPONSE to Standing Discovery Order by USA as to Luis Raul Vicente Fonseca (Monk, Lacey) (Entered: 07/16/2021)
07/21/2021	<u>68</u>	Witness List by Luis Raul Vicente Fonseca (Hernandez, Armando) (Entered: 07/21/2021)
07/26/2021	<u>69</u>	NOTICE OF ATTORNEY APPEARANCE Jonathan Bailyn appearing for USA. . Attorney Jonathan Bailyn added to party USA(pty:pla). (Bailyn, Jonathan) (Entered: 07/26/2021)
07/30/2021	<u>70</u>	MOTION to Dismiss on Speedy Trial <u>5</u> Indictment by Luis Raul Vicente Fonseca. Responses due by 8/13/2021 (pes) (Entered: 08/02/2021)
08/02/2021	<u>71</u>	PAPERLESS ORDER REQUIRING RESPONSE as to Luis Raul Vicente Fonseca re <u>70</u> Pro Se Motion to Dismiss on Speedy Trial <u>5</u> Indictment filed by Luis Raul Vicente Fonseca. Defense counsel to file a written notice by 8/12/2021 indicating whether or not he is adopting the pro se motion. Signed by Judge Robert N. Scola, Jr on 8/2/2021. (jh) (Entered: 08/02/2021)
08/03/2021	<u>72</u>	NOTICE Adopting Pro Se Motion by Luis Raul Vicente Fonseca (Hernandez, Armando) (Entered: 08/03/2021)
08/03/2021	<u>73</u>	PAPERLESS ORDER REQUIRING RESPONSE from AUSA as to Luis Raul Vicente Fonseca re <u>70</u> Pro Se Motion to Dismiss <u>5</u> Indictment filed by Luis Raul Vicente Fonseca. Government's response is due by 8/23/2021. Signed by Judge Robert N. Scola, Jr on 8/3/2021. (jh) (Entered: 08/03/2021)

08/23/2021	<u>74</u>	RESPONSE in Opposition by USA as to Luis Raul Vicente Fonseca re <u>70</u> MOTION to Dismiss on Speedy Trial <u>5</u> Indictment Replies due by 8/30/2021. (Bailyn, Jonathan) (Entered: 08/23/2021)
08/24/2021	<u>75</u>	PAPERLESS ORDER denying <u>70</u> Motion to Dismiss for Speedy Trial as to Luis Raul Vicente Fonseca (1). As set forth in detail in the Government's response (ECF no. 74), only 39 days have run of the 70 day speedy trial period. All other times have been tolled by the filing of motions, including a motion to suppress, and due to Administrative Orders of this Court relating to the COVID pandemic. Signed by Judge Robert N. Scola, Jr (RNS) (Entered: 08/24/2021)
08/31/2021	<u>76</u>	Joint MOTION to Continue Trial by USA as to Luis Raul Vicente Fonseca. Responses due by 9/14/2021 (Bailyn, Jonathan) (Entered: 08/31/2021)
09/02/2021	<u>77</u>	ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 8/31/2021 until 11/22/2021. Granting <u>76</u> Joint MOTION to Continue Trial. Calendar Call set for 11/16/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 11/22/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 9/1/2021. <i>See attached document for full details.</i> (jh) (jh). (Entered: 09/02/2021)
09/28/2021	<u>78</u>	MOTION for Substitution of Counsel. Substituting David Kalman Tucker for Armando Hernandez by Luis Raul Vicente Fonseca. Attorney David Kalman Tucker added to party Luis Raul Vicente Fonseca(pty:dft). Responses due by 10/12/2021 (Tucker, David) (Entered: 09/28/2021)
09/28/2021	<u>79</u>	PAPERLESS ORDER granting <u>78</u> Motion for Substitution of Counsel. Attorney David Kalman Tucker added. Attorney Armando Hernandez terminated as to Luis Raul Vicente Fonseca (1). Signed by Judge Robert N. Scola, Jr on 9/28/2021. (jh) (Entered: 09/28/2021)
10/21/2021	<u>80</u>	Unopposed MOTION to Modify Conditions of Release <i>To allow attendance at birthday party</i> by Luis Raul Vicente Fonseca. Responses due by 11/4/2021 (Attachments: # <u>1</u> Text of Proposed Order)(Tucker, David) (Entered: 10/21/2021)
10/22/2021	<u>81</u>	PAPERLESS ORDER granting <u>80</u> Unopposed Motion to Modify Conditions of Release as to Luis Raul Vicente Fonseca (1). Defendant is permitted to attend his son's birthday party in Miami, Florida, at the address specified in Defendant's motion, beginning at 9:00 PM on 10/23/2021 and returning at 3:30 AM on 10/24/2021. All other terms and conditions of bond remain in full force and effect. Signed by Judge Robert N. Scola, Jr on 10/22/2021. (jh) (Entered: 10/22/2021)
11/03/2021	<u>82</u>	PAPERLESS ORDER SETTING IN-PERSON HEARING as to Luis Raul Vicente Fonseca. Status Conference set for 11/22/2021 09:30 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida. Defendant is required to be present at status conference. Signed by Judge Robert N. Scola, Jr on 11/3/2021. (jh) (Entered: 11/03/2021)
11/15/2021	<u>83</u>	PAPERLESS ORDER cancelling calendar call set for 11/16/2021 09:00 AM and jury trial set for 11/22/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr. as to Luis Raul Vicente Fonseca. Parties are required to appear in person for status conference on 11/22/2021 at 9:30 AM as previously ordered. See order at docket entry 82. At the 11/22/2021 status conference,

01/21/2022	<u>93</u>	MOTION to Dismiss on Speedy Trial <u>5</u> Indictment <i>for Violation of Title 18 USC 3174</i> by Luis Raul Vicente Fonseca. Responses due by 2/4/2022 (Tucker, David) (Entered: 01/21/2022)
01/24/2022	94	PAPERLESS ORDER REQUIRING RESPONSE from AUSA as to Luis Raul Vicente Fonseca re <u>93</u> MOTION to Dismiss <u>5</u> Indictment for Violation of Title 18 U.S.C. Section 3174 filed by Luis Raul Vicente Fonseca. Response is due by 2/3/2022. Signed by Judge Robert N. Scola, Jr on 1/24/2022. (jh) (Entered: 01/24/2022)
01/27/2022	<u>95</u>	NOTICE of Reassignment of Assistant US Attorney. Jonathan Bailyn appearing for USA. Lacey Elizabeth Monk terminated (Bailyn, Jonathan) (Entered: 01/27/2022)
02/01/2022	<u>96</u>	RESPONSE in Opposition by USA as to Luis Raul Vicente Fonseca re <u>93</u> MOTION to Dismiss on Speedy Trial <u>5</u> Indictment <i>for Violation of Title 18 USC 3174</i> Replies due by 2/8/2022. (Bailyn, Jonathan) (Entered: 02/01/2022)
02/04/2022	<u>97</u>	ORDER denying <u>93</u> Motion to Dismiss for Speedy Trial as to Luis Raul Vicente Fonseca. Signed by Judge Robert N. Scola, Jr. <i>See attached document for full details.</i> (kbe) (Entered: 02/04/2022)
02/07/2022	98	<p>PAPERLESS ORDER as to Luis Raul Vicente Fonseca re <u>86</u> Order Setting Calendar Call for 02/08/2021 09:00 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida.</p> <p>Calendar call will proceed in-person and not by video conference. Counsel of record and defendant are required to be present in courtroom 12-3 on the date and time specified herein.</p> <p>If a party is going to request a continuance of the trial date, a motion to continue should be filed prior to the calendar call. If parties have reached an agreement, they should contact Judge's chambers at 305-523-5145 to request a change of plea hearing date.</p> <p>Signed by Judge Robert N. Scola, Jr on 2/7/2022. (jh) (Entered: 02/07/2022)</p>
02/07/2022	<u>99</u>	Unopposed MOTION to Continue <i>Calendar Call and Trial</i> by Luis Raul Vicente Fonseca. Responses due by 2/22/2022 (Tucker, David) (Entered: 02/07/2022)
02/07/2022	<u>100</u>	ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 2/7/2022 until 2/28/2022. Granting <u>99</u> Unopposed MOTION to Continue Calendar Call and Trial Date. Calendar Call set for 2/22/2022 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 2/28/2022 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 2/7/2022. <i>See attached document for full details.</i> (jh) (Entered: 02/07/2022)
02/16/2022	101	<p>PAPERLESS ORDER SETTING IN-PERSON CHANGE OF PLEA HEARING as to Luis Raul Vicente Fonseca. Change of Plea Hearing set for 2/28/2022 09:00 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida.</p> <p>Change of plea hearing will proceed in-person and not by video conference. Counsel of record and defendant are required to be present in courtroom 12-3 on the date and time specified herein.</p> <p>The Government shall e-mail the Court with any plea agreement/proffer no later than one day prior to the change of plea hearing at scola@flsd.uscourts.gov and shall advise the Court if there is no plea agreement.</p>

		the Court will set a calendar call and trial date. Signed by Judge Robert N. Scola, Jr on 11/15/2021. (jh) (Entered: 11/15/2021)
11/22/2021	84	PAPERLESS Minute Entry for proceedings held before Judge Robert N. Scola, Jr: In-Person Status Conference and Calendar Call as to Luis Raul Vicente Fonseca held on 11/22/2021. Defendant present. Defense counsel announced he will be filing a motion to dismiss pursuant to 18 U.S.C. Section 3174(b). Calendar call set for 2/8/2022 at 9:00 am and jury trial 2/14/2022 at 9:00 am - scheduling order to follow. Defendant's ore tenus motion to allow Defendant to attend Thanksgiving dinner at Juan Pablo Fonseca's home on 11/25/2021 from 8:00 pm until 1:00 am is granted. No non-related children are allowed. Total time in court: 22 minutes. Spanish Interpreter present. Attorney Appearance(s): Jonathan Bailyn, David Kalman Tucker, Court Reporter: Tammy Nestor, 305-523-5148 / Tammy_Nestor@flsd.uscourts.gov. (jh) (Entered: 11/22/2021)
11/22/2021	85	PAPERLESS ORDER as to Luis Raul Vicente Fonseca - granting Defendant's ore tenus motion to allow Defendant to attend Thanksgiving dinner at Juan Pablo Fonseca's home on 11/25/2021 from 8:00 pm until 1:00 am is granted. No non-related children are allowed. Signed by Judge Robert N. Scola, Jr on 11/22/2021. (jh) (Entered: 11/22/2021)
11/22/2021	<u>86</u>	ORDER TO CONTINUE - Ends of Justice as to Luis Raul Vicente Fonseca - Time excluded from 11/22/2021 until 2/14/2022. Defendant's ore tenus motion to continue trial date is granted. Calendar Call set for 2/8/2022 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 2/14/2022 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 11/22/2021. <i>See attached document for full details.</i> (jh) (Entered: 11/22/2021)
11/23/2021	<u>87</u>	Unopposed MOTION to Travel to <i>Attend Thanksgiving at Son's Home</i> by Luis Raul Vicente Fonseca. (Attachments: # <u>1</u> Text of Proposed Order for Travel)(Tucker, David) (Entered: 11/23/2021)
11/23/2021	88	PAPERLESS ORDER granting <u>87</u> Amended Motion to Attend Thanksgiving Dinner as to Luis Raul Vicente Fonseca (1). Defendant is permitted to attend Thanksgiving dinner at Juan Pablo Fonseca's home on 11/25/2021 from 4:00 pm until 11:00 pm. No non-related children are allowed to attend. Signed by Judge Robert N. Scola, Jr on 11/23/2021. (jh) (Entered: 11/23/2021)
12/16/2021	<u>89</u>	Unopposed MOTION to Travel to <i>Sons' Home for Christmas and New Years</i> by Luis Raul Vicente Fonseca. (Attachments: # <u>1</u> Text of Proposed Order)(Tucker, David) (Entered: 12/16/2021)
12/17/2021	<u>90</u>	ORDER granting <u>89</u> Motion to Allow Defendant to Attend his Son's Christmas and New Year's Celebrations as to Luis Raul Vicente Fonseca (1). Signed by Judge Robert N. Scola, Jr on 12/17/2021. <i>See attached document for full details.</i> (jh) (Entered: 12/17/2021)
01/11/2022	<u>91</u>	Unopposed MOTION to Travel to <i>Hollywood for Neuro Psychiatric Appointment</i> by Luis Raul Vicente Fonseca. (Attachments: # <u>1</u> Text of Proposed Order)(Tucker, David) (Entered: 01/11/2022)
01/12/2022	<u>92</u>	ORDER granting <u>91</u> Motion for Permission to Travel on 01/21/2022 from Miami, Florida to Hollywood, Florida to attend a neuro-psychiatric appointment as to Luis Raul Vicente Fonseca (1). Signed by Judge Robert N. Scola, Jr on 1/12/2022. <i>See attached document for full details.</i> (jh) (Entered: 01/12/2022)

		Signed by Judge Robert N. Scola, Jr on 6/13/2022. (jh) (Entered: 06/13/2022)
06/14/2022	<u>123</u>	MOTION to Continue Sentencing Hearing by Luis Raul Vicente Fonseca. Responses due by 6/28/2022 (Pallas, George) (Entered: 06/14/2022)
06/14/2022	124	PAPERLESS ORDER granting <u>123</u> Motion to Continue Sentencing Hearing as to Luis Raul Vicente Fonseca (1). Sentencing is continued to 7/22/2022 08:30 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida. Signed by Judge Robert N. Scola, Jr on 6/14/2022. (jh) (Entered: 06/14/2022)
07/11/2022	<u>125</u>	MOTION to Withdraw Plea of Guilty <i>Prior to Sentencing</i> by Luis Raul Vicente Fonseca. (Pallas, George) (Entered: 07/11/2022)
07/11/2022	126	<p>PAPERLESS ORDER REQUIRING RESPONSE from AUSA as to Luis Raul Vicente Fonseca re <u>125</u> MOTION to Withdraw Plea of Guilty Prior to Sentencing filed by Luis Raul Vicente Fonseca. Government's response is due by 8/1/2022.</p> <p>The sentencing hearing presently set for 7/22/2022 08:30 AM in Miami Division before Judge Robert N. Scola Jr. is canceled. A new hearing date will be set if the Court denies his motion to withdraw the plea.</p> <p>Signed by Judge Robert N. Scola, Jr on 7/11/2022. (jh) (Entered: 07/11/2022)</p>
07/21/2022	<u>127</u>	RESPONSE in Opposition by USA as to Luis Raul Vicente Fonseca re <u>125</u> MOTION to Withdraw Plea of Guilty <i>Prior to Sentencing</i> Replies due by 7/28/2022. (Bailyn, Jonathan) (Entered: 07/21/2022)
07/22/2022	128	PAPERLESS ORDER SETTING HEARING on <u>125</u> MOTION to Withdraw Plea of Guilty Prior to Sentencing: as to Luis Raul Vicente Fonseca. Motion Hearing set for Wednesday 7/27/2022 09:00 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida. Signed by Judge Robert N. Scola, Jr on 7/22/2022. (jh) (Entered: 07/22/2022)
07/22/2022	129	<p>PAPERLESS ORDER RESETTING TIME FOR HEARING on <u>125</u> MOTION to Withdraw Plea of Guilty Prior to Sentencing: as to Luis Raul Vicente Fonseca. Motion Hearing is reset to 10:15 AM on 7/27/2022 in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida.</p> <p>Government's email request to reset hearing due to a scheduling conflict is granted.</p> <p>Signed by Judge Robert N. Scola, Jr on 7/22/2022. (jh) (Entered: 07/22/2022)</p>
07/27/2022	<u>130</u>	PRO SE MOTION to Dismiss Case for Lack of Jurisdiction by Luis Raul Vicente Fonseca. Responses due by 8/10/2022. (jh) (Entered: 07/27/2022)
07/27/2022	131	<p>PAPERLESS Minute Entry for proceedings held before Judge Robert N. Scola, Jr: Evidentiary Motion Hearing as to Luis Raul Vicente Fonseca held on 7/27/2022 re <u>125</u> Motion to Withdraw Plea of Guilty Prior to Sentencing filed by Luis Raul Vicente Fonseca. Luis Raul Vicente Fonseca sworn and testified. Motion to withdraw plea of guilty is granted. Calendar call is set for 8/23/2022 at 9:00 AM and jury trial set for 8/29/2022 at 9:00 AM.</p> <p>Defendant's bond is revoked and he is remanded to the custody of the US Marshals Service pending trial.</p>

		Total time in court: 25 minutes. Spanish Interpreter present. Attorney Appearance(s): AUSA Jonathan Bailyn, and George Thomas Pallas, Esquire. Court Reporter: Vernita Allen-Williams, 305-523-5048 / Vernita_Allen-Williams@flsd.uscourts.gov. (jh) Modified on 7/27/2022 to add text (jh). (Entered: 07/27/2022)
07/27/2022	<u>132</u>	PAPERLESS ORDER: The Court held a hearing on <u>125</u> the Defendant's motion to withdraw his guilty plea, on July 27, 2022, during which the Defendant testified under oath. For the reasons stated on the record, the Court grants <u>125</u> the Defendant's motion to withdraw his plea of guilty. Signed by Judge Robert N. Scola, Jr (jh) (Entered: 07/27/2022)
07/27/2022	<u>133</u>	PAPERLESS ORDER: The Court denies <u>130</u> the Defendant's pro se motion to dismiss the case against him. The Defendant has not set forth any legal basis upon which dismissal would be warranted. Further, the Court advises the Defendant that under the Court's Local Rules, a party who is represented by counsel may not appear pro se, acting on his own behalf, except at the Court's discretion in open court. S.D. Fla. L.R. 11.1(d) (4). Signed by Judge Robert N. Scola, Jr. (kbe) (Entered: 07/27/2022)
07/27/2022	<u>134</u>	PAPERLESS ORDER as to Luis Raul Vicente Fonseca: The Court sua sponte revokes Defendant's bond. Defendant admitted lying to the Court during his plea colloquy. Defendant is from Venezuela and is 72 years old and faces a lengthy prison sentence if convicted. The Court finds no conditions or combination of conditions can reasonably assure his appearance in the case as to Luis Raul Vicente Fonseca. Signed by Judge Robert N. Scola, Jr on 7/27/2022. (jh) (Entered: 07/27/2022)
07/28/2022	<u>135</u>	SCHEDULING ORDER as to Luis Raul Vicente Fonseca. Calendar Call set for 8/23/2022 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Jury Trial set for 8/29/2022 09:00 AM in Miami Division before Judge Robert N. Scola Jr. Signed by Judge Robert N. Scola, Jr on 7/27/2022. See attached document for full details. (jh) Pattern Jury Instruction Builder - To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.call.uscourts.gov or click here. (Entered: 07/28/2022)
08/11/2022	<u>136</u>	Defendant's MOTION to Dismiss <u>5</u> Indictment for Violation of the Appointments Clause by Luis Raul Vicente Fonseca. Responses due by 8/25/2022 (Attachments: # <u>1</u> Exhibit) (Pallas, George) (Entered: 08/11/2022)
08/11/2022	<u>137</u>	PAPERLESS ORDER REQUIRING RESPONSE from AUSA as to Luis Raul Vicente Fonseca re <u>136</u> Defendant's MOTION to Dismiss <u>5</u> Indictment for Violation of the Appointments Clause filed by Luis Raul Vicente Fonseca. Response is due by 8/22/2022. Signed by Judge Robert N. Scola, Jr on 8/11/2022. (jh) (Entered: 08/11/2022)
08/16/2022	<u>138</u>	NOTICE OF ATTORNEY APPEARANCE Maria Catala appearing for USA. . Attorney Maria Catala added to party USA(pty:pla). (Catala, Maria) (Entered: 08/16/2022)
08/19/2022	<u>139</u>	RESPONSE in Opposition by USA as to Luis Raul Vicente Fonseca re <u>136</u> Defendant's MOTION to Dismiss <u>5</u> Indictment for Violation of the Appointments Clause Replies due by 8/26/2022. (Attachments: # <u>1</u> Exhibit Duggar Motion) (Bailyn, Jonathan) (Entered: 08/19/2022)
08/22/2022	<u>140</u>	ORDER denying <u>136</u> Fourth Motion to Dismiss as to Luis Raul Vicente Fonseca (1). Signed by Judge Robert N. Scola, Jr on 8/22/2022. See attached document for full details. (jas) (Entered: 08/22/2022)
08/22/2022	<u>141</u>	NOTICE of Intent to Use Expert Testimony Evidence by USA as to Luis Raul Vicente Fonseca (Attachments: # <u>1</u> CV, Goodrich, # <u>2</u> CV, Williams) (Bailyn, Jonathan) (Entered: 08/22/2022)

08/22/2022	<u>142</u>	Witness List by USA as to Luis Raul Vicente Fonseca (Bailyn, Jonathan) (Entered: 08/22/2022)
08/22/2022	<u>143</u>	EXHIBIT LIST by USA as to Luis Raul Vicente Fonseca (Bailyn, Jonathan) (Entered: 08/22/2022)
08/22/2022	<u>144</u>	Proposed Voir Dire Questions by USA as to Luis Raul Vicente Fonseca (Bailyn, Jonathan) (Entered: 08/22/2022)
08/23/2022	<u>145</u>	<p>PAPERLESS Minute Entry for proceedings held before Judge Robert N. Scola, Jr: Calendar Call as to Luis Raul Vicente Fonseca held on 8/23/2022. Defendant present. Government estimated trial will last 2 to 3 days - Defendant agreed. Jury trial will commence at 9:15 am on 8/29/2022. Total time in court: 4 minutes. Spanish Interpreter present. Attorney Appearance(s): AUSA Jonathan Bailyn, and Helmuth Solis for George Thomas Pallas. Court Reporter: Sharon Velazco, 305-523-5636 / Sharon_PellVelazco@flsd.uscourts.gov.</p> <p>NOTICE OF POLICY RE ELECTRONIC SUBMISSION OF EXHIBITS. Local Rule 5.3 provides that within ten (10) days of the conclusion of a hearing or trial, a party must file in CM/ECF an electronic version of most exhibits offered or introduced into evidence. Before electronically filing, the filer must redact any sensitive, confidential, or private information in accordance with Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, and CM/ECF Administrative Procedures, Section 6, or seek an order from the Court either to seal the exhibit or to exempt the exhibit from electronic filing under subsection (b)(3)(C) of the rule. Failure to electronically file exhibits and the Certificate of Compliance Re Admitted Evidence within ten (10) days may result in the imposition of sanctions. The Local Rule, the Certificate of Compliance Re Admitted Evidence, and the Quick Reference Guide to Electronically Filing Trial Exhibits can be found on the Court's website: http://www.flsd.uscourts.gov. (jh) (Entered: 08/23/2022)</p>
08/23/2022	<u>146</u>	<p>PAPERLESS ORDER as to Luis Raul Vicente Fonseca. Jury trial set for 8/29/2022 09:15 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-1, 12th floor, Miami, Florida.</p> <p>Due to the present power-outage in courtroom 12-3, the jury trial will proceed in courtroom 12-1 (12th floor).</p> <p>Signed by Judge Robert N. Scola, Jr on 8/23/2022. (jh) (Entered: 08/23/2022)</p>
08/23/2022	<u>147</u>	<p>TRIAL ORDER as to Luis Raul Vicente Fonseca. Jury Trial set for 8/29/2022 09:15 AM before Judge Robert N. Scola Jr.. Signed by Judge Robert N. Scola, Jr on 8/23/2022. <i>See attached document for full details.</i> (jas)</p> <p>Pattern Jury Instruction Builder - To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.ca11.uscourts.gov or click here. (Entered: 08/24/2022)</p>
08/24/2022	<u>148</u>	NOTICE <i>Re: Witness and Exhibits</i> by Luis Raul Vicente Fonseca (Pallas, George) (Entered: 08/24/2022)
08/28/2022	<u>149</u>	EXHIBIT LIST by USA as to Luis Raul Vicente Fonseca (Bailyn, Jonathan) (Entered: 08/28/2022)
08/28/2022	<u>150</u>	Proposed Jury Instructions by USA as to Luis Raul Vicente Fonseca (Bailyn, Jonathan) (Entered: 08/28/2022)

08/29/2022	<u>151</u>	Minute Entry for proceedings held before Judge Robert N. Scola, Jr: Jury Selection/Voir Dire held and Jury Trial begun on 8/29/2022 Luis Raul Vicente Fonseca (1) on Counts 1s, and 2s. Day 1. Jury trial will resume 08/30/2022 at 9:15 AM. See attached minute entry for additional information. Spanish Interpreter present. Court Reporter: Sharon Velazco, 305-523-5636 / Sharon_PellVelazco@flsd.uscourts.gov. (jh) (Entered: 08/29/2022)
08/30/2022	<u>152</u>	COURT'S instructions to the jury read 08/30/2022 as to Luis Raul Vicente Fonseca (jh) (Entered: 08/30/2022)
08/30/2022	<u>153</u>	Minute Entry for proceedings held before Judge Robert N. Scola, Jr: Jury Trial as to Luis Raul Vicente Fonseca held on 8/30/2022. Day 2. Jury trial concluded. Defendant found guilty as to counts 1 and 2 of the superseding indictment. Sentencing hearing set for 9/12/2022 at 10:00 AM. See attached minute entry for additional information. Spanish Interpreter present. Court Reporter: Sharon Velazco, 305-523-5636 / Sharon_PellVelazco@flsd.uscourts.gov. (jh) (Entered: 08/31/2022)
08/31/2022	<u>154</u>	SUPERSEDING indictment given to jury panel for deliberations as to Luis Raul Vicente Fonseca. (jh) (Entered: 08/31/2022)
08/31/2022	<u>155</u>	Jury Note as to Luis Raul Vicente Fonseca (jh) (Entered: 08/31/2022)
08/31/2022	<u>156</u>	Jury Note as to Luis Raul Vicente Fonseca (jh) (Entered: 08/31/2022)
08/31/2022	<u>157</u>	Jury Note as to Luis Raul Vicente Fonseca (jh) (Entered: 08/31/2022)
08/31/2022	<u>158</u>	JURY VERDICT as to Luis Raul Vicente Fonseca (1) Guilty on Count 1s, and 2s (jh) (Entered: 08/31/2022)
08/31/2022	<u>159</u>	PAPERLESS ORDER SETTING SENTENCING HEARING as to Luis Raul Vicente Fonseca. Sentencing set for 9/12/2022 10:00 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida. Signed by Judge Robert N. Scola, Jr on 8/31/2022. (jh) (Entered: 08/31/2022)
09/02/2022	<u>160</u>	NOTICE OF POST-TRIAL PRODUCTION OF JENCKS ACT MATERIAL by USA as to Luis Raul Vicente Fonseca (Bailyn, Jonathan) (Entered: 09/02/2022)
09/02/2022		SYSTEM ENTRY - Docket Entry 161 restricted/sealed until further notice. (kpe) (Entered: 09/02/2022)
09/08/2022	<u>162</u>	Defendant's MOTION for New Trial by Luis Raul Vicente Fonseca. Responses due by 9/22/2022 (Pallas, George) (Entered: 09/08/2022)
09/08/2022	<u>163</u>	PAPERLESS ORDER SETTING HEARING on <u>162</u> Defendant's Motion for New Trial: as to Luis Raul Vicente Fonseca. Motion Hearing set for 9/12/2022 10:00 AM in Miami Division before Judge Robert N. Scola Jr., at the Wilkie D. Ferguson U.S. Courthouse, 400 North Miami Avenue, Courtroom 12-3, 12th floor, Miami, Florida. Signed by Judge Robert N. Scola, Jr on 9/8/2022. (jh) (Entered: 09/08/2022)
09/08/2022	<u>164</u>	NOTICE of Intent to Seek Variance at Sentencing by Luis Raul Vicente Fonseca (Pallas, George) (Entered: 09/08/2022)
09/09/2022	<u>165</u>	FINAL Addendum 2 Disclosure of REVISED Presentence Investigation Report of Luis Raul Vicente Fonseca. This is a limited access document. Report access provided to attorneys Jonathan Bailyn, George Thomas Pallas by USPO (Attachments: # <u>1</u> Addendum - First, # <u>2</u> Addendum - Second)(dtn1) (Entered: 09/09/2022)
09/09/2022	<u>166</u>	Unopposed MOTION for Extension of Time to File Trial Exhibits by USA as to Luis Raul Vicente Fonseca. Responses due by 9/23/2022 (Bailyn, Jonathan) (Entered: 09/09/2022)

		new trial transcript(s) ordered. Order placed by Bonnie Phillips-Williams. Email sent to Court Reporter Coordinator. (Phillips-Williams, Bonnie) (Entered: 09/22/2022)
09/22/2022	<u>188</u>	COURT REPORTER ACKNOWLEDGMENT as to Luis Raul Vicente Fonseca re <u>187</u> Transcript Information Form,. Court Reporter: Sharon Velazco, 305-523-5636 / Sharon_PellVelazco@flsd.uscourts.gov. Estimated filing date of transcript 10/22/2022. USCA number 22-13152A. (Pell Velazco, Sharon) (Entered: 09/22/2022)
09/23/2022		SYSTEM ENTRY - Docket Entry 189 restricted/sealed until further notice. (kpe) (Entered: 09/23/2022)
09/26/2022	<u>190</u>	COURT REPORTER ACKNOWLEDGMENT as to Luis Raul Vicente Fonseca re <u>186</u> Transcript Information Form,. Court Reporter: Vernita Allen-Williams, 305-523-5048 / Vernita_Allen-Williams@flsd.uscourts.gov. Estimated filing date of transcript 10-26-22. (vas) Modified linked docket entry on 10/25/2022 (apz). (Entered: 09/26/2022)
10/06/2022	<u>191</u>	TRANSCRIPT INFORMATION FORM as to Luis Raul Vicente Fonseca re <u>183</u> Notice of Appeal - Final Judgment, filed by Luis Raul Vicente Fonseca. Status Conference DE 84 transcript(s) ordered. Order placed by Bonnie Phillips-Williams. Email sent to Court Reporter Coordinator. (Phillips-Williams, Bonnie) (Entered: 10/06/2022)
10/24/2022	<u>192</u>	TRANSCRIPT of Hearing to withdraw plea as to Luis Raul Vicente Fonseca held on 7-27-22 before Judge Robert N. Scola, Jr, Volume Number 1 of 1, 1-13 pages, re: <u>183</u> Notice of Appeal - Final Judgment, Court Reporter: Vernita Allen-Williams, 305-523-5048 / Vernita_Allen-Williams@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/14/2022. Redacted Transcript Deadline set for 11/28/2022. Release of Transcript Restriction set for 1/23/2023. (vas) (Entered: 10/24/2022)
10/24/2022	<u>193</u>	TRANSCRIPT NOTIFICATION as to Luis Raul Vicente Fonseca - Transcript(s) ordered on: 9-26-22 by Bonnie Phillips-Williams, Esq. has/have been filed by Court Reporter: Vernita Allen-Williams, 305-523-5048 / Vernita_Allen-Williams@flsd.uscourts.gov re <u>190</u> Court Reporter Acknowledgment, <u>187</u> Transcript Information Form,. (vas) (Entered: 10/24/2022)
11/04/2022	<u>194</u>	TRANSCRIPT of Jury Trial as to Luis Raul Vicente Fonseca held on 08/29/2022 before Judge Robert N. Scola, Jr, Volume Number 1 of 2, 1 - 256 pages, re: <u>183</u> Notice of Appeal - Final Judgment, Court Reporter: Sharon Velazco, 305-523-5636 / Sharon_PellVelazco@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/28/2022. Redacted Transcript Deadline set for 12/5/2022. Release of Transcript Restriction set for 2/2/2023. (Pell Velazco, Sharon) Modified text on 11/4/2022 (apz). (Entered: 11/04/2022)
11/04/2022	<u>195</u>	TRANSCRIPT of JURY TRIAL as to Luis Raul Vicente Fonseca held on 08/30/2022 before Judge Robert N. Scola, Jr, Volume Number 2 of 2, 1-179 pages, re: <u>183</u> Notice of Appeal - Final Judgment, Court Reporter: Sharon Velazco, 305-523-5636 / Sharon_PellVelazco@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/28/2022. Redacted Transcript Deadline set for 12/5/2022. Release of Transcript Restriction set for 2/2/2023. (Pell Velazco, Sharon) Modified text on 11/4/2022 (apz). (Entered: 11/04/2022)

NO. 22-13152-AA

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff/appellee,

v.

LUIS RAUL VINCENTE FONSECA,
Defendant/appellant.

**On Appeal from the United States District Court
for the Southern District of Florida**

REPLY BRIEF OF THE APPELLANT FONSECA

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**THIS CASE IS ENTITLED TO PREFERENCE
(CRIMINAL APPEAL)**

" " APPENDIX C "

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

United States v. Luis Raul Vincente Fonseca
Case No. 22-13152-AA

Appellant Fonseca files this Certificate of Interested Persons and Corporate Disclosure Statement, listing the parties and entities interested in this appeal, as required by 11th Cir. R. 26.1.

Bailyn, Jonathan, Assistant United States Attorney

Becerra, Jacqueline, United States Magistrate Judge

Caruso, Michael, Federal Public Defender

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Gonzalez, Juan Antonio, Former United States Attorney

Goodman, Jonathan, United States Magistrate Judge

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Louis, Lauren Fleischer, United States Magistrate Judge

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Monk, Lacey Elizabeth, Assistant United States Attorney

O'Sullivan, John J., United States Magistrate Judge

Pallas, George Thomas, Attorney

Phillips-Williams, Bonnie, Assistant Federal Public Defender

Reid, Lisette M., United States Magistrate Judge

Rubio, Lisa Tobin, Chief, Assistant United States Attorney

Scola, Jr., Robert N., United States District Judge

Silverstein, Joan, Assistant United States Attorney

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United States of America, Plaintiff/Appellee

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TABLE OF CITATIONS

CASES:

Barker v. Wingo,

407 U.S. 514 (1972) 1, 2

Dogget v. United States,

505 U.S. 647 (1992) 1

United States v. Zedner,

126 S.Ct. 1976 (2006) 2

STATUTES:

18 U.S.C. § 3174 1

REPLY ARGUMENT AND CITATIONS OF AUTHORITY

Mr. Fonseca's Constitutional Right to a

Speedy Trial Was Violated.

The two-year eight-month delay of the trial of Mr. Fonseca's case violated his Sixth Amendment right to a speedy trial. Furthermore, Mr. Fonseca can satisfy the four-factor test of *Barker v. Wingo*, 407 U.S. 514, 630 (1972). The more than one-year delay was "presumptively prejudicial." *Dogget v. United States*, 505 U.S. 647, 652 (1992). Although the court continued the trial for more than a year due to the coronavirus pandemic, at no time did the court invoke the emergency provisions set forth in 18 U.S.C. § 3174, and that was error. Therefore, that time should not be excluded.

Mr. Fonseca asserted his right to a speedy trial throughout the pendency of the case, including on the morning of trial. (DE 70, 93, 104:4-5). Additionally, Mr. Fonseca was unquestionably prejudiced. The government took more than a year to charge him by superseding indictment, with not only possession of child pornography, but distribution of child pornography. (DE 42). Thereby increasing the length of his potential sentence. Also, although he was free on bond for a majority of the time, he was on house arrest, which severely constrained his liberty, including his ability to travel, and had to ask the court for permission to even pass holidays with his

family. This restriction on liberty was recognized in *Barker v. Wingo*, 407 US. 514, 527 (1972), as a form of prejudice.

Therefore, contrary to the position taken by the government, Mr. Fonseca established the four-factor test set forth in *Barker v. Wingo, Id.* and his case should have been dismissed for a violation of his Constitutional right to a speedy trial. *United States v. Zedner*, 126 S.Ct. 1976 (2006).

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief complies with the type-volume limitation and typeface requirements of Fed. R. App. P. 32(a)(7)(B), because it contains 294 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the requirements of Fed. R. App. P. 32(a)(5) and (a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Times New Roman font.

By: /s/Bonnie Phillips-Williams
BONNIE PHILLIPS-WILLIAMS
Attorney for Appellant Fonseca
Dated: April 24, 2023

CERTIFICATE OF SERVICE

I HEREBY certify that on the 24th day of April, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and sent seven copies to the Clerk of the Court via third party commercial carrier for delivery within three days. I also certify that the foregoing document is being served this day via CM/ECF on Yeney Hernandez, 99 N.E. 4th Street, Miami, Florida 33132 and Lisa Tobin Rubio, Assistant United States Attorney, Chief, Appellate Division, 99 N.E. 4th Street, Miami, Florida 33132.

By: /s/Bonnie Phillips-Williams
BONNIE PHILLIPS-WILLIAMS