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Conferred by 28 U.S.C. § 515  
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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WAIEL YOUSIF ANTON (5),  
aka "Will Anton,"

Defendant.

Case No.: 19-CR-4768-GPC

Date: March 13, 2020

Time: 11:30 a.m.

Honorable Gonzalo P. Curiel

**RESPONSE IN OPPOSITION TO  
DEFENDANT ANTON'S MOTION  
TO SEVER**

**TO: Eugene Iredale, Attorney for Defendant WAIEL YOUSIF ANTON (5).**

The UNITED STATES OF AMERICA, by and through its counsel, PETER J. MAZZA, Attorney for the United States Acting Under Authority Conferred by 28 U.S.C. § 515, and Nicholas W. Pilchak and Andrew R. Haden, Assistant U.S. Attorneys, hereby files its Response in Opposition to Defendant's Motion.

**I.**

**STATEMENT OF THE CASE**

On November 21, 2019, a federal grand jury in the Southern District of California returned a 23-count indictment charging five defendants with firearms and drug

1 trafficking offenses. Defendant Wael Yousif Anton, charged in Counts 1 and 18, was  
 2 arraigned on the indictment on November 22, 2019 and entered a not guilty plea.  
 3 Defendant Giovanni Tilotta was arraigned on the indictment on November 25, 2019.

4 On February 28, 2020, Anton filed the instant motion to sever his trial from that  
 5 of his codefendants. This response follows.

## 6 II.

### 7 STATEMENT OF FACTS

#### 8 A. Factual Background

9 Former Sheriff's Captain M. Marco Garmo has engaged in the business of  
 10 dealing in firearms without a license for years.<sup>1</sup> In particular, he specialized in obtaining  
 11 "off-roster" handguns by falsely claiming to be their true buyer while intending to  
 12 furnish them to private citizens prohibited by California law from directly obtaining the  
 13 weapons themselves. As part of that endeavor, Garmo repeatedly bought and sold (and  
 14 straw-purchased) smaller and newer-model off-roster handguns that were especially  
 15 well-suited for concealed carry. While serving as a Lieutenant at the Sheriff's  
 16 Department, Garmo was previously assigned to review applications for department-  
 17 issued permits to carry a concealed weapon (commonly known as "CCWs").

18 Wael Anton was Garmo's close friend and associate. In fact, Anton was the  
 19 recipient of the AK-47-style rifle that Garmo straw purchased as charged in Count 5.  
 20 Anton also assisted Garmo's unlicensed business by helping Garmo's customers and  
 21 others to short-circuit the usual wait time for CCW applications with the Sheriff's  
 22 Department. Anton accomplished this by leveraging his own special relationship with  
 23 a licensing clerk to whom he had made an unlawful cash payment.

24 The symbiosis between Garmo's unlicensed firearms trafficking and Anton's  
 25 CCW "consulting" arrangement was demonstrated when Garmo sold two off-roster  
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27 <sup>1</sup> This is a summary statement of facts for purposes of this Response only. The  
 28 United States reserves the right to supplement it at a later time.

1 handguns to an ATF undercover agent. Garmo suggested that the undercover agent  
2 apply for a CCW, adding that he could write a letter of recommendation for the agent—  
3 whom he had just met. Garmo suggested to the undercover agent that he could get a  
4 faster appointment with the Sheriff's Department for his CCW application by paying  
5 Anton, because Anton was helping Garmo's cousin in the same way.

6 Anton charged the undercover agent \$1,000 for his "consulting" services, which  
7 principally included calling the clerk at the Sheriff's Department to whom Anton had  
8 made the unlawful payment. Anton urged the undercover agent that "whatever I do  
9 here stays between me and you," and then called his preferred clerk and secured him an  
10 appointment that was approximately eight months earlier than those then available to  
11 the general public. During their meeting, Anton showed the undercover agent a  
12 handgun he himself had purchased from Garmo.

13 Anton also invited the undercover agent to refer other "consulting" clients to him,  
14 and volunteered to pay the undercover agent a referral fee for doing so. Specifically,  
15 Anton promised to pay the undercover agent \$100 per referral. In turn, agents  
16 discovered one of the \$100 bills paid by the agent to Anton inside Garmo's wallet when  
17 it was searched eight days later. This marked bill represented a kickback paid to Garmo  
18 by Anton from a portion of the "consulting" fee Anton charged the undercover agent  
19 whom Garmo had referred to him. Garmo later lied to agents about the last time he had  
20 received money from Anton, as charged in Count 17.

21 When Anton's home was searched by federal agents eight days after his meeting  
22 with the undercover agent, Anton placed an unsolicited phone call to the undercover  
23 agent. During the call, in the space of approximately six minutes, Anton urged the agent  
24 nine times not to tell federal investigators about the \$1,000 that he had paid Anton for  
25 his services. He repeated this instruction in a separate telephone call the following day.  
26 Several days thereafter, in another telephone call, Anton changed his instructions and  
27 told the undercover agent to tell investigators the truth if he were interviewed, and  
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1 falsely claimed that he had never told the undercover agent to lie about paying Anton  
2 any money.

3 **B. Procedural History**

4 At defendants' initial appearances and arraignments, this case was set for motion  
5 hearing and trial setting on January 10, 2020. Tilotta filed a motion for discovery and  
6 for leave to file further motions on January 2, 2020, and Garmo joined the motion the  
7 same day.

8 At the hearing on January 10, 2020, counsel for Garmo and Tilotta requested  
9 additional time to review discovery in this matter, which is extensive. Anton's counsel  
10 acknowledged the validity of that request, but predicted that he was likely to ask the  
11 Court for a speedy trial at a future hearing. The Court continued the matter until  
12 February 7, 2020, finding the case unusual or complex and excluding time on that basis  
13 as well as in the interests of justice to enable counsel to review discovery and prepare  
14 their defense.<sup>2</sup>

15 On February 7, 2020, Anton indicated that he wished to file a motion to sever to  
16 seek a separate, speedy trial. The remaining defendants sought a second continuance to  
17 review discovery. The United States informed the Court that discovery produced as of  
18 that date consisted of approximately 59,117 pages of written discovery,<sup>3</sup> as well as  
19 almost 100 audio and over three dozen video recordings collected during the  
20 investigation, and thousands of emails from a warrant search. The Court formalized its  
21 finding that the case was unusual or complex, and continued to exclude time on that  
22 basis and in the interests of justice to enable counsel to review discovery. At the same  
23 time, it set a separate (earlier) hearing to enable Anton to file this motion for a severance.

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26 <sup>2</sup> The Court also based this exclusion on Tilotta's need to secure counsel, as his  
27 defense attorney had thus far entered special appearances on his behalf.

28 <sup>3</sup> Well over 8,000 pages of this discovery pertain directly to Anton.

1 **III.**

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 Anton's motion invites this Court to sever his case from that of his co-defendants,  
4 and put on a separate trial including largely repetitive evidence, in order to vindicate his  
5 speedy trial rights. This Court should decline that invitation.

6 In this case, there is no allegation that Anton's charges are improperly joined with  
7 those of his co-defendants. Nor could there be, given the charges. Therefore, Anton's  
8 argument rests on Rule 14 of the Federal Rules of Criminal Procedure, which provides  
9 that if joinder "appears to prejudice a defendant or the government, the court may . . .  
10 sever the defendants' trials, or provide any other relief that justice requires."

11 "There is a preference in the federal system for joint trials of defendants who are  
12 indicted together." *Zafiro v. United States*, 506 U.S. 534, 537 (1993). "Severance is  
13 appropriate under Rule 14 'only if there is a serious risk that a joint trial would  
14 compromise a specific trial right of one of the defendants, or prevent the jury from  
15 making a reliable judgment about guilt or innocence.'" *United States v. Stinson*, 647  
16 F.3d 1196, 1205 (9th Cir. 2011), *quoting Zafiro*, 506 U.S. at 539. Anton does not argue  
17 the latter.

18 Here, the only basis offered for the requested severance is Anton's insistence on  
19 his right to a speedy trial. Anton correctly notes that, because time has been properly  
20 excluded under the Speedy Trial Act as to his codefendants, time is also properly  
21 excluded as to him. *See* 18 U.S.C. § 3161(h)(6) (excluding time for a "reasonable  
22 period of delay when the defendant is joined for trial with a codefendant as to whom  
23 the time for trial has not run and no motion for severance has been granted"); *see also*  
24 *Henderson v. United States*, 476 U.S. 321, 323 n.2 (1986) ("All defendants who are  
25 joined for trial generally fall within the speedy trial computation of the latest  
26 codefendant."). Notably, Anton does not contest the reasonableness of the delay thus  
27 far for the reasons stated by his codefendants and the Court. Nor does Anton point to  
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any of the factors that typically underpin a claim for a speedy (individual) trial, such as lengthy pretrial detention or evidentiary prejudice like ailing witnesses.<sup>4</sup>

Instead, Anton simply argues that his severed trial would be a minimal extra burden on the Court's resources. He makes this surprising forecast by offering to enter unspecified stipulations to shorten the length of his duplicative trial by agreeing to the allegations that principally harm his codefendants rather than himself. While the United States appreciates Anton's generosity in offering to concede the elements of proof that inculcate his codefendants, the United States is not obliged to accept stipulations offered by the defense and is entitled to prove its case by the evidence of its choice. *Old Chief v. United States*, 519 U.S. 172 (1997). In this case, it would be a mistake to assume that Anton's hypothetical stipulations would reduce a severed trial—in which he would be charged with aiding and abetting Garmo's sprawling unlicensed firearms trafficking enterprise—to just a day or two of evidence concerning "whether Mr. Anton aided and abetted that crime with the requisite criminal intent." Def. Mot. at 3. They would not.

Because Anton is charged with aiding and abetting an underlying crime, the United States would seek to admit evidence of much of the underlying crime that Anton aided and abetted, rather than accept an anodyne stipulation that the crime took place. Thus, the Court would be faced with a large amount of duplicative evidence in a severed trial—evidence that it would be forced to relitigate a second time in the trial of Garmo and Tilotta. This significant waste of judicial resources is precisely why the federal

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<sup>4</sup> In truth, the purpose of Anton's motion is revealed in its final sentence, in which he cites two out-of-circuit cases finding that a defendant is foreclosed from obtaining dismissal of his case on speedy trial grounds by failing to timely move for a severance. Def. Mot. at 3–4. In the Ninth Circuit, a motion to sever is not an absolute requirement for dismissal under Section 3162. *See United States v. Messer*, 197 F.3d 330, 338 (9th Cir. 1999). Regardless, Anton's point is not that he is necessarily entitled to a severed trial based on a reasoned exercise of the Court's discretion now; it is that he wishes to have the option to have his case dismissed later. But the remedy for this risk is careful attention to the reasonableness of the bases for exclusion of time under Section 3161(h), and not a severance *ex ante*.

1 system embodies a preference for joint trials. There is no reason to overrule that  
2 preference here, in order to put on redundant evidence at a largely duplicative trial.

3 IV.

4 **CONCLUSION**

5 For the reasons stated above, the United States respectfully requests that this  
6 Court deny Defendant's Motion.

7  
8 DATED: March 6, 2020

9  
10 PETER J. MAZZA  
11 Attorney for the United States  
12 Acting Under Authority  
13 Conferred by 28 U.S.C. § 515

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18 ANDREW R. HADEN  
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