

PETER J. MAZZA
Attorney for the United States
Acting Under Authority
Conferred by 28 U.S.C. § 515
Nicholas W. Pilchak
MA State Bar No. 669658
Andrew R. Haden
CA State Bar No. 258436
Assistant U.S. Attorneys
880 Front Street, Room 6293
San Diego, CA 92101
Tel: (619)546-9709 / 6961
Email: nicholas.pilchak@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MORAD MARCO GARMO (1),
GIOVANNI VINCENZO TILOTTA (3),
aka "Gio Tilotta,"
WAIEL YOUSIF ANTON (5),
aka "Will Anton,"

Defendants.

Case No.: 19-CR-4768-GPC

Date: May 1, 2020

Time: 11:30 a.m.

Honorable Gonzalo P. Curiel

**JOINT MOTION TO CONTINUE
STATUS HEARING AND EXCLUDE
TIME UNDER THE SPEEDY TRIAL
ACT**

The parties hereby jointly move the Court to continue the hearing presently set for May 1, 2020 at 11:30 a.m. The parties also jointly move to exclude time under the Speedy Trial Act, pursuant to 18 U.S.C. § 3161(h)(7). The United States of America, Defendant M. Marco Garmo, and Defendant Giovanni Tilotta jointly move for a continuance and exclusion of time until October 2020. Defendant Anton joins this request insofar as the new hearing date may be set for June 2020, and objects to a continuance thereafter. The parties request that the new continued date be calendared

1 as a motion hearing, with the parties directed to file motions two weeks prior to the
2 hearing and responses one week prior.

3 **I.**

4 **STATEMENT OF THE CASE**

5 On November 21, 2019, a federal grand jury in the Southern District of California
6 returned a 23-count indictment charging five defendants with firearms and drug
7 trafficking offenses. Defendants M. Marco Garmo and Wael Yousif Anton were
8 arraigned on the indictment on November 22, 2019 and Defendant Giovanni Vincenzo
9 Tilotta was arraigned on November 25, 2019. All three entered not guilty pleas. The
10 remaining defendants entered guilty pleas to Count 1 of the indictment on
11 November 22, 2019.

12 **II.**

13 **STATEMENT OF FACTS**

14 At the defendants' initial appearances and arraignments, this case was set for
15 motion hearing and trial setting on January 10, 2020. At the hearing on January 10,
16 2020, counsel for M. Marco Garmo and Giovanni Tilotta requested additional time to
17 review discovery in this matter, which is extensive. The Court continued the matter
18 until February 7, 2020, finding the case unusual or complex and excluding time on that
19 basis as well as in the interests of justice to enable counsel to review discovery and
20 prepare their defense.

21 On February 7, 2020, Wael Anton indicated that he wished to file a motion to
22 sever to seek a separate, speedy trial. The remaining defendants sought a second
23 continuance to review discovery. The United States informed the Court that discovery
24 produced as of that date consisted of approximately 59,117 pages of written discovery,
25 as well as almost 100 audio and over three dozen video recordings collected during the
26 investigation, and thousands of emails from a warrant search. The Court formalized its
27 finding that the case was unusual or complex, and continued to exclude time on that
28 basis and in the interests of justice to enable counsel to review discovery.

1 On March 13, 2020, after briefing and a hearing, this Court denied without
2 prejudice Anton's motion to sever his trial from that of the remaining defendants.

3 The Chief Judge of the U.S. District Court for the Southern District of California
4 issued an order on March 17, 2020 suspending jury trials and other proceedings during
5 the COVID-19 public health emergency ("Order 18"). Among other things, Order 18
6 continued all jury trials in civil and criminal matters until April 16, 2020, and
7 suspending criminal proceedings including motion hearings until April 16, 2020 except
8 as otherwise directed by an individual district judge.¹ On April 2, 2020, the Judicial
9 Council of the Ninth Circuit issued an order approving the Chief Judge's declaration of
10 a judicial emergency in the District.

11 On April 15, 2020, the Chief Judge issued another emergency order ("Order 24"),
12 which continued the effect of the terms of Order 18 until May 16, 2020, absent further
13 order of the Court.

14 Both Order 18 and Order 24 excluded the periods of time covered by their terms
15 under the Speedy Trial Act, finding that the extension serves the ends of justice under
16 the meaning of 18 U.S.C. § 3161(h)(7)(A).

17 III.

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 The indictment in this case was filed on November 21, 2019. Defendants made
20 their initial appearances on November 22 and 25, 2019, respectively. The Speedy Trial
21 Act, 18 U.S.C. § 3161(c)(1), generally requires trial to commence within 70 days of the
22 later of those dates. Section 3161(h) excludes certain periods of time in calculating the
23 70-day period. This includes delay resulting from a continuance if the court finds "the
24 ends of justice served by taking such action outweigh the best interest of the public and

25
26 ¹ Among other things, Order 18 was predicated on the states of emergency declared
27 by the President of the United States, the Governor of the State of California, and the
28 Mayor of the City of San Diego, as well as the limitations on public gatherings advised
by the Centers for Disease Control and Prevention and other public health authorities.

the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). The court must “set[] forth ... either orally or in writing, its reasons” for the finding. *Id.* The court “shall consider” the following factors, “among others”:

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

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

...

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

18 U.S.C. § 3161(h)(7)(B). Time shall also be excluded for “a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for a severance has been granted.” 18 U.S.C. § 3161(h)(6).

“No continuance under [this provision] shall be granted because of general congestion of the court’s calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.” U.S.C. § 3161(h)(7)(C).

In this case, for the general reasons reflected in Orders 18 and 24, as well as the case-specific reasons presented by this matter, the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendants in a speedy trial, for the following reasons:

- 1 1. The ongoing public health emergency has limited the ability of the parties
2 to prepare for trial in this matter, despite the exercise of diligence on the
3 part of all parties. Specifically, the ongoing social distancing campaign
4 and directives to limit in-person work, meetings and interviews, has
5 hampered the ability of the parties to locate and interview potential trial
6 witnesses; to prepare, produce and review discovery; and to otherwise
7 prepare this case for trial.
- 8 2. In particular, the ongoing public health emergency has affected the ability
9 of the United States to complete the production of discovery in this case,
10 which is very voluminous. While most discovery (and the most relevant
11 discovery) has already been produced, the United States is currently
12 finalizing a fourth round of discovery that is estimated to consist of
13 approximately 80,000 pages.² Reviewing and producing this material
14 while working remotely as much as possible has proven to be very
15 challenging. The United States expects to produce this discovery within
16 one week. Once this discovery is produced, defendants will require a
17 reasonable time to review it.
- 18 3. The factual complexity of the allegations in the indictment, as recognized
19 by the Court in its prior declarations of the case's complexity under the
20 Speedy Trial Act, requires particular diligence on defense counsel's part
21 to prepare for trial, especially when coupled with the volume of discovery
22 in this case.

23 Defense counsel represent that they have discussed the need for this continuance
24 with their clients, and that defendants each agree to and join in the request for this

25 ² Almost 75,000 pages of this material consists of emails that are only marginally
26 relevant to the charges in the indictment but which are produced out of an abundance
27 of caution as they may constitute the statements of a defendant. *See* Fed. R. Crim. P.
28 16(a)(1)(B).

1 continuance—with the exception that Defendant Anton’s request does not encompass a
2 continuance beyond a date in June 2020.

3 IV.

4 **CONCLUSION**

5 For the reasons stated above, the parties jointly move for a continuance and to
6 exclude time under the Speedy Trial Act. The parties agree that the period of delay
7 excluded spans from the filing of this joint motion, 18 U.S.C. 3161(h)(1)(D), until the
8 new date for the hearing. The United States, Defendant Garmo and Defendant Tilotta
9 request that this new date be set in October 2020, with time excluded until then.
10 Defendant Anton objects to a continued hearing date beyond June 2020.

11 DATED: April 23, 2020

12
13 PETER J. MAZZA
14 Attorney for the United States
15 Acting Under Authority
16 Conferred by 28 U.S.C. § 515

17 /s/ Nicholas W. Pilchak
18 NICHOLAS W. PILCHAK
19 Assistant United States Attorney

20 /s/ Andrew R. Haden
21 ANDREW R. HADEN
22 Assistant United States Attorney

23 /s/ Kevin McDermott (by consent)
24 KEVIN MCDERMOTT
25 Counsel for M. Marco Garmo

26 /s/ Jeremy Warren (by consent)
27 JEREMY WARREN
28 Counsel for Giovanni Tilotta

/s/ Eugene Iredale (by consent)
EUGENE IREDALE
Counsel for Wael Yousif Anton