

1 REBECCA G. CHURCH  
Attorney for the United States  
2 Acting Under Authority  
Conferred by 28 U.S.C. § 515  
3 Nicholas W. Pilchak  
CA State Bar No. 331711  
4 Andrew R. Haden  
CA State Bar No. 258436  
5 Assistant U.S. Attorneys  
880 Front Street, Room 6293  
6 San Diego, CA 92101  
Tel: (619)546-9709 / 6961  
7 Email: nicholas.pilchak@usdoj.gov

8 Attorneys for the United States  
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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.  
15

16 GIOVANNI VINCENZO TILOTTA (3),  
17 aka “Gio Tilotta,”

18 Defendant.  
19

Case No.: 19-CR-4768-GPC

Trial: August 30, 2022

Time: 8:30 a.m.

Honorable Gonzalo P. Curiel

**UNITED STATES’ AMENDED TRIAL  
BRIEF**

20 The UNITED STATES OF AMERICA, by and through its counsel, REBECCA  
21 G. CHURCH, Attorney for the United States Acting Under Authority Conferred by 28  
22 U.S.C. § 515, and Nicholas W. Pilchak and Andrew R. Haden, Assistant U.S.  
23 Attorneys, hereby files its Amended Trial Brief.

24 **I.**

25 **STATEMENT OF THE CASE**

26 **A. Indictment & Superseding Indictment**

27 On November 21, 2019, a federal grand jury in the Southern District of California  
28 returned a 23-count indictment charging five defendants with firearms and drug  
trafficking offenses. Defendant Giovanni Vincenzo Tilotta (3) was arraigned on the

1 indictment on November 25, 2019, and also pleaded not guilty. A federal grand jury  
2 returned an eight-count superseding indictment against Tilotta and Defendant Waiel  
3 Yousif Anton (5) on April 2, 2021. Tilotta has pleaded not guilty to those charges, as  
4 well. Anton pleaded guilty to attempted obstruction of justice on July 15, 2022. ECF  
5 290, 291.

6 The Court dismissed counts 3 and 6 of the superseding indictment on January 12,  
7 2022. ECF 243. Tilotta remains charged in Counts 1, 2, 4, 5 and 7.

8 **B. Trial Status**

9 Trial is set for August 30, 2022 at 8:30 a.m. before the Honorable Gonzalo P.  
10 Curiel. The United States anticipates that its case-in-chief will last roughly six or seven  
11 full trial days. A status hearing regarding the trial is presently set for August 29, 2022.

12 **C. Status of Counsel**

13 Defendant Tilotta is represented by appointed counsel Jeremy Warren, assisted  
14 by Katie Jenkins.

15 **D. Custody Status**

16 Defendant Tilotta is released on a \$25,000 personal surety bond secured by his  
17 signature and the signature of one financially responsible adult. ECF 31.

18 **E. Interpreter**

19 The United States does not require an interpreter for any of its witnesses.

20 **F. Jury Trial**

21 Defendant has not submitted a jury waiver.

22 **G. Pretrial Motions**

23 Defendant Tilotta filed a motion to dismiss Count 13 of the original indictment  
24 which was mooted by the filing of the superseding indictment. ECF 111, 152. Tilotta  
25 also filed motions to dismiss Counts 3 and Counts 5 or 6 of the superseding indictment,  
26 which were granted on January 12, 2022. ECF 225, 226, 243. Tilotta filed a motion to  
27 dismiss the indictment based on a purported violation of the Second Amendment, ECF  
28 295, which the Court denied orally at a hearing on August 19, 2022.

1 The United States filed a variety of motions *in limine*. ECF 224. Tilotta filed no  
 2 written motions. At a hearing on January 12, 2022, the Court deferred ruling on most  
 3 of the United States' motions, except: (1) it found the motion to preclude unnoticed  
 4 defense expert witnesses moot, as the defense indicated they will not call experts; and  
 5 (2) it denied the United States' motion to admit physical firearms in court. ECF 243.

6 The Court also granted several oral motions from Tilotta's counsel: (1) to allow  
 7 attorney-conducted *voir dire*; (2) to keep the indictment from the jury room; and (3) to  
 8 provide each juror with a copy of jury instructions. The Court denied Tilotta's oral  
 9 motion for extra peremptory challenges for the defense. *Id.*

## 10 **H. Stipulations**

11 To streamline the proof at trial, the United States has proposed a series of  
 12 stipulations since June 2021. ECF 224-1 at 16. Although the United States awaits the  
 13 return of signed stipulations, the parties have recently agreed to stipulate that (1) all  
 14 firearms referenced during the trial were firearms within the meaning of federal law;  
 15 (2) Tilotta had an FFL during all events referenced at trial, while Marco Garmo did not;  
 16 and (3) all text and voice messages, as well as emails, produced in discovery in this case  
 17 are authentic copies of actual text messages, voice messages, and emails.

## 18 **I. Discovery**

19 The United States has produced extensive discovery in this case, estimated at a  
 20 total of roughly 155,829 pages of written discovery and over 278 gigabytes of data. The  
 21 United States has complied with its discovery obligations. To date, the United States  
 22 has received zero pages of reciprocal discovery.

## 23 **II.**

## 24 **STATEMENT OF FACTS**

25 Former Sheriff's Captain M. Marco Garmo (1) engaged in the business of dealing  
 26 in firearms without a license for years.<sup>1</sup> In particular, he specialized in obtaining "off-

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27 <sup>1</sup> This is a summary statement of facts for purposes of this brief only.  
 28

roster” handguns by falsely claiming to be their true buyer while intending to furnish them to private citizens prohibited by California law from directly obtaining the weapons themselves.<sup>2</sup> As part of that endeavor, Garmo repeatedly bought and sold (and straw-purchased) smaller and newer-model off-roster handguns especially well-suited for concealed carry.

Mr. Tilotta assisted Garmo in this illegal enterprise. Tilotta acted as Garmo’s willing federal firearms licensee (“FFL”)—a licensed gun dealer willing to bend and break the laws for firearms transfers involving Garmo and his close associates. Tilotta knowingly processed straw transfers in which Garmo and Fred Magana (4)—Garmo’s immediate subordinate at the San Diego County Sheriff’s Department (“SDCSD”)—acquired desirable new off-roster handguns for others, including especially Leo Joseph Hamel (2).<sup>3</sup> Tilotta unlawfully processed transfer paperwork for firearms transactions that had not properly speaking even begun, because the parties hadn’t yet appeared at his dealer (Honey Badger Firearms) to begin the paperwork, and then allowed the parties to backdate the required forms after the fact. Tilotta also processed a firearms transaction at an unlawful location: a firearms transfer for defense attorney Vikas Bajaj inside Garmo’s Captain’s office at the SDCSD Rancho San Diego station.<sup>4</sup>

### III.

#### WITNESSES

In advance of the current trial date, the United States has provided the defense with a revised draft witness list, which includes the following potential witnesses:

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<sup>2</sup> On September 15, 2020, Garmo pleaded guilty to engaging in the business of dealing in firearms without a license. ECF 108, 110.

<sup>3</sup> On November 22, 2019, Hamel pleaded guilty to aiding and abetting Garmo’s unlicensed dealing in firearms. ECF 8, 13.

<sup>4</sup> On December 9, 2020, Bajaj entered a guilty plea to aiding and abetting the false entry of dealer records by Mr. Tilotta in related case no. 20-cr-3905-JLB; *see* ECF 5, 7.

1. Vikas Bajaj
2. ATF SSA/CFI Matthew Beals
3. ATF SA Sean Becker
4. ATF IOI Thomas Chimileski
5. Jesus R. Diaz
6. Leo J. Hamel
7. Bronner Handwerger
8. FBI SA Christina Hokenson
9. Jason Khoury
10. Renee Lewis
11. SDCSD Deputy Derek Llanes
12. Fred Magana
13. ATF SA Joseph Nazareno
14. ATF SA James Sanders
15. ATF IOI Robert Sison
16. ATF SA Joseph Stearns
17. FBI SA Ashley Townsend

#### IV.

#### EXHIBITS

The United States has provided the defense with a revised draft exhibit list and will tender a final exhibit list the morning of trial. Presently, the United States intends to offer in evidence the following categories of exhibits:

1. Firearms transaction records for relevant transactions, including transfers processed at Honey Badger Firearms
2. Acquisition and disposition logs for Honey Badger Firearms and Leo Hamel Fine Jewelers

3. Photographs of relevant firearms, including firearms transferred at Honey Badger Firearms; physical locations and items seized; and Defendants and their associates at certain events
4. Email messages
5. Text messages
6. Audio and video recordings, and associated English-language transcripts
7. Cellular telephones

**V.**

**PERTINENT LAW**

The United States submitted proposed jury instructions setting out the elements of the charged crimes on February 21, 2022. ECF 256. Tilotta filed proposed instructions the next day. ECF 258. The United States will file roughly concurrently with this brief a set of amended proposed jury instructions, tailored to the upcoming trial involving only a single defendant.

**VI.**

**VOIR DIRE**

The United States respectfully requests that the Court make the following inquiries of the members of the jury venire.

1. Has anyone had an unpleasant experience with local law enforcement, including the San Diego County Sheriff's Department?

2. Is anyone a current or former member of the Honorary Deputy Sheriff's Association? What about the San Diego County Gun Owner's Association?

3. Has anyone had an unpleasant experience with federal law enforcement, including the Federal Bureau of Investigation ("FBI") or the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF")?

4. Does anyone own a firearm, or live in the same household with someone who does? Does anyone own more than ten firearms, or live with someone who does?

1           5.     Has anyone ever conducted a private party transfer (or “PPT”) of a  
2 firearm? Has anyone conducted more than five PPTs?

3           6.     Has anyone ever applied with ATF to be a Federal Firearms Licensee,  
4 otherwise known as an FFL, to obtain a license to deal in firearms? Has anyone ever  
5 applied to the California Department of Justice to become a California Firearms Dealer,  
6 otherwise known as a CFD?

7           7.     Does anyone have strong beliefs about the Second Amendment of the U.S.  
8 Constitution, which safeguards the right to keep and bear arms? Does anyone believe  
9 that the Second Amendment means that the State of California should not be able to  
10 regulate the ownership or transfer of firearms?

11          8.     Does anyone think they will have trouble deciding whether the Defendant  
12 is guilty or not guilty, regardless of the strength of the evidence? Does anyone have  
13 any religious or moral beliefs that would prevent them from finding the Defendant  
14 guilty or not guilty in this case?

15          9.     Agreeing and disagreeing with our society’s laws is fundamental to the  
16 concept of a democracy. Nevertheless, if selected as jurors, you will be instructed that  
17 this trial is not a forum for you to express your agreement or disagreement with the  
18 firearms laws of the United States or the State of California. The jurors selected in this  
19 case must be prepared to take an oath to follow the law as I instruct you. Does anyone  
20 think they would be unable or unwilling to follow the law because of their personal  
21 beliefs about firearms laws?

22          10.    The indictment in this case charges the Defendant, who is presumed  
23 innocent unless and until proven guilty beyond a reasonable doubt. During this trial,  
24 you will hear evidence about this Defendant, but you will also hear evidence about other  
25 individuals who may have been involved in some of the conduct but are not facing  
26 charges at this trial. You may also hear evidence about the consequences of this case  
27 for some of those other individuals. Regardless, if selected as a juror for this case, you  
28 would be required to take an oath to follow the law as I instruct you. Does anyone think

1 that they may be unable or unwilling to follow the law in deciding whether the  
2 Defendant in this case is guilty or not guilty because of concerns about other individuals  
3 who are not charged in this trial?

4 11. Some of the individuals you may hear about during this trial may have  
5 been the subject of attention in the media, including former Sheriff's Captain Marco  
6 Garmo, jeweler Leo Hamel, defense attorney Vikas Bajaj, and others. Does anyone  
7 here think they may have heard or read anything about this case in the media? What  
8 have you heard or read? Do you believe you will be able to set that aside if selected as  
9 a juror in this case and consider only the evidence admitted during this trial?

10 12. This trial may involve testimony from federal agents who investigated in  
11 an undercover capacity, which means that they did not reveal that they were law  
12 enforcement agents and instead posed as someone else. Although this investigative  
13 technique is permitted by law, does anyone feel that their personal views about this  
14 technique would make it hard for them to evaluate such an agent's testimony fairly and  
15 consistent with my instructions?

16 13. This trial may involve testimony from individuals who have made an  
17 agreement with the United States and hope to receive a benefit under that agreement.  
18 Other individuals may discuss their participation in potentially criminal conduct, but  
19 may not have been personally charged with a crime. I will give an instruction on  
20 weighing and evaluating the credibility of witnesses, including how to evaluate the  
21 testimony of someone who may have received a benefit in connection with their  
22 testimony. Does anyone have strong personal views about someone who would  
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1 cooperate with law enforcement in exchange for a benefit that may make them unable  
2 or unwilling to follow my instructions in considering such a witness's testimony?

3  
4 DATED: August 23, 2022

5 REBECCA G. CHURCH  
6 Attorney for the United States  
7 Acting Under Authority  
8 Conferred by 28 U.S.C. § 515

9 /s/ Nicholas W. Pilchak  
10 NICHOLAS W. PILCHAK  
11 Assistant United States Attorney

12 /s/ Andrew R. Haden  
13 ANDREW R. HADEN  
14 Assistant United States Attorney  
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