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JURISDICTION

GOVERNMENT,

Plaintiff,

v.

CLIENT

Defendant.

NO.

JOINT MOTION REQUESTING  
CONTINUANCE OF TRIAL AND  
RELATED DATES

On February 29, 2020, Governor Jay Inslee declared a state of emergency in all counties in the state of Washington due to the public health emergency caused by the corona virus disease 2019 ("COVID-19"). On March 11, 2020, Governor Inslee issued a Proclamation and Order banning gathering of 250 or more. On March 12, 2020, Inslee ordered all schools closed in King, Pierce and Snohomish Counties until April 24, 2020. On March 16, 2020, Inslee ordered closure of all bars, restaurants, and clubs in the State of Washington, and limited gatherings to no more than 50 people.

FOR FEDERAL CASES:

On March 6, 2020, the United States District Court for the Western District of Washington issued General Order No. 01-20 to address identified and anticipated impacts

1 arising from a community outbreak of Coronavirus Disease 2019 (COVID-19). Citing  
2 guidance issued by public health officials, and documented risks to public gatherings and  
3 travel, the Order continued all civil and criminal matters pending further Order of the Court.

4 The Order stated that

5 the time period of the continuances implemented by this  
6 General Order will be excluded under the Speedy Trial Act, as  
7 the Court specifically finds that the ends of justice served by  
8 ordering the continuances outweigh the best interests of the  
9 public and any defendant's right to a speedy trial, pursuant to  
10 18 U.S.C. § 3161(h)(7)(A).

11 General Order No. 01-20 at p. 2. The Court noted in conclusion that the General Order  
12 would be vacated or amended no later than March 31, 2020.

13 In addition, as discussed below, the Bureau of Prisons (BOP) has recently  
14 announced new restrictions on defense counsel visitations at the Federal Detention Center  
15 SeaTac, where Defendant is detained.

16 **FOR STATE CASES:**

17 On March 4, 2020, Chief Justice Debra Stephens entered an Emergency Order  
18 that states, in part, as follows:

19 **WHEREAS**, during this state of emergency, it may become necessary for courts in  
20 these counties to close, relocate, or otherwise significantly modify their regular operations:  
21 and

22 **WHEREAS**, the presiding judges in these counties need sufficient authority to effectively  
23 administer their courts in response to this state of emergency, including authority to adopt, modify,  
24 and suspend court rules and orders as warranted to address the emergency conditions.

25 **NOW, THEREFORE**, pursuant to the Court's authority to administer justice and to ensure  
26 the safety of court personnel, litigants, and the public.

27 **IT IS HEREBY ORDERED THAT:**

- 28 1. The Presiding Judges of the Washington courts are authorized to adopt, modify, and suspend  
court rules and orders, and to take further actions concerning court operations as warranted to  
address the current public health emergency;

2. Each court shall immediately transmit copies of emergency local rules adopted or modified to address the public health emergency to the Administrative Office of the Courts in lieu of the requirements of General Rule 7;
3. Each court that closes pursuant to this Order or General Rule 21 shall sign an administrative order closing the court, file the original with the clerk of the affected court and notify the Administrative Office of the Courts as soon as practicable.

For these and other reasons, the government and Defendant, through their undersigned counsel, jointly move to vacate all current dates in the case, including the April 27, 2020, trial date; the April 17, 2020, pretrial conference date; and the March 23, 2020, pretrial motions date.

The parties request that the Court set a status hearing for May 15, 2020. At the status hearing, the Court can set a new pretrial motion deadline, pretrial conference date and a new trial date.

Finally, the parties request that the Court exclude time under the Speedy Trial Act through May 30, 2020.

#### **A. Procedural background**

Tailor to your case

Today, March 16, 2020, undersigned defense counsel forwarded the government an email that she and other defense attorneys had received from BOP officials at the Federal Detention Center SeaTac, where Rincon-Solorio is detained pending trial. Among other things, BOP informed the defense attorneys that because of COVID-19:

- legal visitations at the Federal Detention Center SeaTac have been suspended “for at least the next 30 days”;
- attorneys may request special legal visits, which BOP will considered on a case-by-case basis;
- special legal visits, if approved by BOP, will require attorneys “to undergo screening prior to entry into the institution, including self-reporting and temperature check”; and

- 1
- 2 • BOP “strongly encourages” attorneys to request a confidential legal phone call rather than requesting a special legal visit.
- 3

4 Undersigned defense counsel raised with the government her concerns about the impact  
5 these restrictions will have on her ability to meet with Defendant in the coming weeks. The  
6 government agreed that under the circumstances, a continuance of the trial date is merited. At  
7 defense counsel’s request, the government then informed the Court’s staff that this joint  
8 motion was forthcoming.

9 **B. Current COVID-19 outbreak and rapidly evolving public health response**

10 The public health crisis and corresponding impacts that prompted General Order No.  
11 01-20 remain largely unmitigated. COVID-19 is spreading throughout the region, and the risk  
12 of exposure is increasing. Government officials at every level have declared public health  
13 emergencies in an effort to insure crisis response efforts address public safety concerns.<sup>1</sup>  
14 Public health experts uniformly recognize that immediate steps be imposed to reduce  
15 transmission rates and preserve limited healthcare resources. Those steps include canceling  
16 large gatherings, practicing social-distancing measures in smaller gatherings, promoting  
17 telework opportunities, limiting travel, and avoiding close contact with persons at elevated risk  
18 of infection, including older adults and persons with chronic medical conditions (heart disease,  
19 diabetes, lung disease).<sup>2</sup>

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23 <sup>1</sup> State of Washington/Proclamation 20-07 by the Governor Amending Proclamations 20-05 and 20-06,  
24 ([https://www.governor.wa.gov/sites/default/files/20-07%20Coronavirus%20\(tmp\).pdf](https://www.governor.wa.gov/sites/default/files/20-07%20Coronavirus%20(tmp).pdf)); City of Seattle/Mayoral  
25 Proclamation of Civil Emergency ([https://durkan.seattle.gov/wp-content/uploads/sites/9/2020/03/COVID-19-Mayoral-  
Proclamation-of-Civil-Emergency.pdf](https://durkan.seattle.gov/wp-content/uploads/sites/9/2020/03/COVID-19-Mayoral-Proclamation-of-Civil-Emergency.pdf)); United States/Proclamation on Declaring a National Emergency Concerning the  
26 Novel Coronavirus Disease (COVID-19) Outbreak ([https://www.whitehouse.gov/presidential-actions/proclamation-  
declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)). All websites cited in this  
27 motion were last visited on March 16, 2020.

28 <sup>2</sup> [https://www.cdc.gov/coronavirus/2019-  
ncov/prepare/prevention.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-  
ncov%2Fabout%2Fprevention.html](https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fprevention.html); <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/index.html>;  
<https://kingcounty.gov/depts/health/communicable-diseases/disease-control/novel-coronavirus/group-limits.aspx>;  
<https://www.kingcounty.gov/depts/health/communicable-diseases/disease-control/novel-coronavirus/protection.aspx>.

1 The number of confirmed cases of COVID-19 within the Puget Sound region alone  
2 increases daily.<sup>3</sup> Experts predict the rate of infection will continue rising with most of the U.S.  
3 population being exposed to the virus.<sup>4</sup> Washington State is one of three states currently  
4 experiencing sustained community spread.<sup>5</sup>

5 It is impossible to predict public health conditions and corresponding social impacts  
6 associated with the outbreak. At a minimum, we can reasonably assume that the exposure-  
7 mitigation measures currently mandated by state and local officials will remain active for the  
8 next six to eight weeks, if not longer.

9 **C. The impact of the COVID-19 outbreak and response on trial preparation**  
10 **and trial proceedings**

11 The realized and projected impacts from the COVID-19 outbreak on trial preparations  
12 and trial proceedings are substantial. The parties agree that these impacts warrant a  
13 continuance of the **current April 27** trial date.

14 *First*, defense counsel believes that new visitation restrictions at the Federal Detention  
15 Center will limit her ability to meet with Defendant ahead of the scheduled trial. In addition,  
16 recommended risk reduction measures will curtail the government's ability to meet with  
17 witnesses. Several anticipated witnesses reside outside the Puget Sound region. And although  
18 telephonic contacts can be arranged, direct personal contact is strongly preferred to review  
19 relevant documents.

20 *Second*, the government has encouraged personnel to telework in an effort to both  
21 reduce personal exposure and limit transmission risk to coworkers. Convening even small  
22 gatherings has been discouraged.

23 *Third*, government counsel anticipates—based on discussions with colleagues who  
24 have April trials—that trial witnesses in this case will raise health and safety concerns  
25 associated with traveling to, and participating in, trial proceedings in the Puget Sound region.

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27 <sup>3</sup> <https://www.doh.wa.gov/Emergencies/Coronavirus>.

28 <sup>4</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

<sup>5</sup> *Id.*

1 These are legitimate concerns given the high number of confirmed COVID-19 cases identified  
2 in this region.

3 *Fourth*, as for trial proceedings, it is fair to assume that current risk-reduction measures  
4 will at least remain in effect through the current **April 27** trial date; those measures may grow  
5 even more stringent. Such measures include travel restrictions, social-distancing protocols,  
6 and minimization of public interactions. The most recent social-distancing local health orders,  
7 Washington State, and CDC guidelines impose new limits on gatherings of more than 50  
8 participants.<sup>6</sup> The duration of these directives is unknown. It is not practicably possible to  
9 comply with these directives during trial proceedings.

10 *Finally*, impaneling a jury that represents a fair cross-section of the community will  
11 likely be very difficult given the anticipated progression of the COVID-19 outbreak.<sup>7</sup> Policies  
12 governing jury service in some jurisdictions were recently amended to allow prospective jurors  
13 to be excused if they met any of the following criteria: chronic health conditions such as heart  
14 disease, lung disease, or diabetes; weakened immune system; pregnancy; age 60 or older; and  
15 sick or recently been in contact with someone who is sick.<sup>8</sup> Adopting a similar policy in this  
16 Court would dramatically restrict the pool of prospective jurors.

17 **D. Request for expedited decision**

18 **Trial is scheduled to start in less than six weeks; pretrial motions are due in less than**  
19 **one week.** The government must begin making travel arrangements for out-of-area witnesses.  
20 And final trial preparations will require in-person interviews. These measures run contrary to  
21 public-health guidance.

22 The parties therefore respectfully request the following:  
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25 <sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/index.html>;  
26 <https://kingcounty.gov/depts/health/communicable-diseases/disease-control/novel-coronavirus/group-limits.aspx>;  
<https://www.governor.wa.gov/news-media/inslee-statement-statewide-shutdown-restaurants-bars-and-limits-size-gatherings-expanded>.

27 <sup>7</sup> Washington State Superior Courts in King, Snohomish, and Pierce counties have suspended all jury trials through at  
28 least April 24, 2020. <https://www.seattletimes.com/seattle-news/crime/king-county-superior-court-suspends-criminal-jury-trials-until-april-wont-be-sending-out-juror-summons/>.

<sup>8</sup> <https://www.kingcounty.gov/courts/superior-court.aspx>.

- 1 • The Court should **vacate all current dates** in the case, **including the March 23,**  
2 **2020, pretrial motions date; the April 17, 2020, pretrial conference hearing date;**  
3 **and the April 27, 2020, trial date.**
- 4 • The Court should **set a status hearing** for **May 15, 2020**, or for another date  
5 between May 15 and May 29, 2020. At that status hearing, the Court can set a  
6 new trial date after considering the relevant factors, including the Court's  
7 calendar and the current status and collateral consequences of the ongoing public  
8 health crisis.
- 9 • Finally, the Court should **exclude all time between the filing of this motion**  
10 **and May 30, 2020.** The Court's current order excludes time through April 27,  
11 2020. The Court should enter a new order under 18 U.S.C. § 3161(h)(7)(A)  
12 extending through May 30, 2020, and finding that the ends of justice served by  
13 continuing the trial in this case outweigh the best interest of the public and the  
14 defendant to a speedy trial.

15 Dated this **17th** day of March 2020.

16  
17 Respectfully submitted,

18 /s/ Emily M. Gause

19 EMILY M. GAUSE

20 Attorney for Defendant

21 130 Andover Park East, Suite 300

22 Tukwila, Washington 98188

23 206-660-8775

24 Email: emily@emilygauselaw.com

25 BRIAN T. MORAN

26 United States Attorney

27 /s/ Jonas Lerman

28 JONAS LERMAN

Assistant United States Attorney

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