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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

16 United States of America,
17
18 Plaintiff,
19 v.
20 6. Andrew Padilla,
21 Defendant.

CR-18-422-PHX-SMB

**UNITED STATES' RESPONSE TO
MOTION TO CONTINUE TRIAL
AND DATES FOR COMPLIANCE
PER SCHEDULING ORDER (Doc.
628)**

22
23 **INTRODUCTION AND SUMMARY OF ARGUMENT**

24 Defendant Andrew Padilla's motion to continue trial and dates for compliance per
25 scheduling order is unavailing and should be denied for several reasons. *First*, defense
26 counsel's recitation of the amount of discovery that he is required to review in preparation
27 for a January 2020 trial date is not fully accurate. A considerable amount of discovery
28 relevant to Padilla has been available since January 2017 and is detailed in the United States

1 Senate Report¹ and the superseding indictment, which clearly identifies the United States’
2 theory in this case and some of the most important pieces of the government’s evidence.
3 (See CR 230.) In addition, a large volume (5.9 million pages) of the discovery (primarily
4 the discovery known as the “Co-Star” material) has little relevance to Padilla as the
5 documents involve Backpage’s international markets. Moreover, the United disclosed to
6 Padilla nearly a year ago the approximately 100 pages of Co-Star related material it might
7 utilize at trial.

8 *Second*, newly appointed counsel has eight months to prepare for trial, is an
9 experienced criminal defense attorney, and has the assistance and resources (financial and
10 otherwise) of the attorneys representing the co-defendants. As the Court is aware, Padilla’s
11 previous counsel and counsel representing the other defendants have already filed
12 numerous notices, motions, responses and replies that arguably support Padilla.

13 *Third*, Padilla’s role in the offense was limited to his position as the head of
14 Backpage’s moderation department. In other words, he was not present during the frequent
15 management meetings where business practices (*e.g.*, The Erotic Review, Rubmaps and
16 other reciprocal link relationships, etc.) were discussed, he was not endorsed on numerous
17 emails that involved public relation strategies, did not attend meetings with various
18 organizations (*i.e.* NCMEC, Auburn Theological Seminary, Polaris, etc.) and law
19 enforcement agencies (Washington State Attorney General’s Office, Cook County
20 Sheriff’s Office, etc.), and did not have a percentage ownership in the company. These
21 factors, among others, clearly distinguish him from the four primary defendants.
22 Additionally and importantly, Padilla is not charged with money laundering (Counts 52-
23 100). Simply stated, the evidence (and corresponding discovery) that applies to Padilla is
24 not as expansive as the relevant discovery that applies to Defendants Lacey, Larkin, Spear
25 and Brunst.

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28 [https://www.hsgac.senate.gov/imo/media/doc/Backpage%20Report%202017.01.10%20F
INAL.pdf](https://www.hsgac.senate.gov/imo/media/doc/Backpage%20Report%202017.01.10%20FINAL.pdf)

1 references Padilla nearly sixty times, and that was accompanied by an 840-page appendix
2 containing dozens of relevant emails. Padilla should already be very familiar with these
3 emails as he either authored or was endorsed on them. In sum, the Senate Report provides
4 an in-depth analysis of Padilla's role as the head of Backpage's moderation department.

5 Lastly, Padilla is also familiar with various victims referenced in the indictment
6 because he was subpoenaed for depositions in certain victims' civil cases prior to the
7 instant federal prosecution. In addition, the 100-page superseding indictment references
8 many of the PSI and grand jury documents pertaining to Padilla. In sum, the superseding
9 indictment and PSI provide a detailed explanation of Padilla's role and outline evidence
10 the United States will rely upon at trial.

11 Moreover, a large volume of discovery is not even relevant to Padilla. More than
12 5.9 million pages of documents disclosed to Padilla originated from a source entitled "Co-
13 Star materials." The vast majority of that data involves postings in foreign markets (where
14 no moderation was implemented) and is of marginal or no relevance to the crimes
15 committed by Padilla in the United States.

16 Furthermore, for an array of reasons, Padilla is at a substantial advantage in being
17 prepared for a January 2020 trial. *First*, the United States' pulled the discovery pertinent
18 to Padilla into a single, comprehensive, well-organized, and easy-to-understand package
19 that it shared with his former counsel in late 2017, months before indictment. *Second*, the
20 superseding indictment is comprehensive and identifies numerous emails Padilla authored
21 or received; in addition, the Senate Report provides a detailed explanation of Padilla's role
22 as the head of Backpage's moderation department. *Third*, Padilla's counsel has been
23 provided both a preliminary witness and exhibit list *ten* months before trial. Typically, in
24 this District, the practice is to provide these lists just weeks before trial. *Fourth*, Padilla
25 not only had the witnesses identified well in advance of trial but the United States has
26 voluntarily disclosed any available Jencks Act statements for those witnesses. As the Court
27 is aware, the United States is not required to disclose these statements until *after* a witness
28 testifies. 18 U.S.C. § 3500. It is the general practice that the United States provide these

1 statements sometime shortly prior to trial (in most cases weeks or days). *Fifth*, the United
2 States also intends to identify and segregate each and every trial exhibit intended for use in
3 its case-in-chief and provide those exhibits to the defense in advance of trial in digital
4 format. Finally, Padilla is out of custody and is able to effectively assist his counsel in
5 reviewing discovery unencumbered by the restrictions of pretrial detention.

6 There is more. As noted in previous pleadings, the prosecution team met with
7 Padilla's prior counsel (Michael Piccarreta) four months *prior* to indictment to review
8 "hot" documents and a road map of the prosecution theory of Padilla's role in the criminal
9 enterprise. (*See* CR 444 at 4.) The United States is willing to meet with Padilla's new
10 counsel and provide the same detailed overview of government's case against his client.
11 The United States has also requested counsel contact it with any questions regarding the
12 case.

13 Padilla also benefits from the substantial motion practice that ensued before new
14 counsel was appointed. Counsel representing the other defendants (Lacey, Larkin, and
15 Brunst have several attorneys) have filed motions for discovery (*e.g.*, motion for *Brady*
16 material), a motion to dismiss the indictment based on possible pretrial defenses, and other
17 motions. (*See, i.e.*, CR 399, 456, 474, 477, 507, 539, 544, 561.) And, the defense has
18 collectively noticed experts and even supplemented that notice. (*See* CR 500, 538.)
19 Notably, Padilla's counsel does not suggest other motions he would file on behalf of Padilla
20 that have not already been filed by his previous counsel or co-defendants. Lastly, Padilla's
21 counsel joined the Backpage defendants' 55-page motion to dismiss indictment (*See* CR
22 615.)

23 *Fifth*, Padilla's argument that his appointment less than ten months prior to trial
24 would deny Padilla effective assistant of trial to which he is entitled is misplaced. (Mot. at
25 4.) In *United States v. Cronin*, 466 U.S. 648, 659, (1984), the Supreme Court reversed the
26 lower court and found that 25 days was a sufficient amount of time for preparation for a
27 complex case, where the attorney was young, inexperienced in criminal law (he was a real
28 estate attorney), and it was his first trial. The Court further found that neither the period of

1 time that the United States spent investigating the case, nor the number of documents that
2 its agents reviewed during that investigation, were necessarily relevant to the question
3 whether a competent lawyer could prepare to defend the case in 25 days. *Id.*

4 Here, unlike *Cronic*, counsel has far more than 25 days to prepare for trial. Again,
5 in addition to the advantages of earlier disclosure of evidence, witness and exhibit lists,
6 and early disclosure of Jencks Act statements, etc., Padilla's counsel has eight months from
7 the date he was appointed to prepare for trial.

8 Padilla's new counsel has been practicing law for nearly forty years.
9 ([http://daveisenberglaw.com/attorney/.](http://daveisenberglaw.com/attorney/)) He is a former federal prosecutor in Phoenix,
10 New York and Washington D.C. (*Id.*) By his own admission he has "a unique expertise
11 in the investigation of defenses and the trial of [like the instant case] complex white collar
12 cases." (*Id.*) In sum, Padilla's new attorney is a highly regarded attorney with a background
13 relevant to defending this complex case. In addition, Padilla had the advantage of a couple
14 of years of representation by another highly-experienced attorney (Mr. Piccarreta
15 represented him at least since March 2017) before the case was assigned to current
16 counsel.²

17 In short, Padilla has an experienced attorney with expertise in complex cases, who
18 will not need to litigate the case by himself. Indeed, Padilla's new attorney will have the
19 benefit of numerous other attorneys urging defenses that would apply to Padilla. Further
20 discovery relevant to Padilla has been in his possession for many months.

21 Padilla's requested continuance should be denied for a further reason: The public
22 and the victims have a right conferred by statute to "proceedings free from unreasonable
23 delay." 18 U.S.C. § 3771(a)(7) (the "Crime Victims' Rights Act"); *see also* 18 U.S.C. §
24 3161(h)(7)(A). The Superseding Indictment contains 17 select victim summaries. (CR
25 230, ¶¶ 160-176.) Of these victims, at least five were juveniles when they were trafficked
26 on Backpage. (CR 230, ¶¶ 163, 164, 167, 169, 172.) Four of the victims were murdered or

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28 ² <https://pd-law.com/>

1 killed as a result of being trafficked on Backpage, and their surviving family members or
2 lawful representatives stand in their shoes for purposes of the Crime Victims’ Rights Act.
3 18 U.S.C. § 3771(e)(2)(B); (CR 230, ¶¶ 165, 173, 174, 175.) The victims’ and public’s
4 statutory right to a speedy trial—and their need for an expeditious resolution of this
5 prosecution—strongly militates against further delay.

6 **CONCLUSION**

7 For these reasons, the United States opposes Padilla’s motion for a continuance.

8 Respectfully submitted this 17th day of June, 2019.

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21
22 **Certificate of Service**

23
24 I hereby certify that on this date, June 17, 2019, I transmitted the foregoing document for
25 filing to the Clerk of the United States District Court and sent a copy via electronic mail
to: David Eisenberg, Esq.

26
27 *s/ Angela Schuetta*
Angela Schuetta
U.S. Attorney’s Office
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