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 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE DISTRICT OF ARIZONA

10 United States of America,
 11 Plaintiff,
 12 vs.
 13 Chauncey Hollingberry,
 14 Defendant.

20-3058MJ-001-PHX-MTM

**GOVERNMENT’S MOTION TO
 SUSPEND SPEEDY TRIAL CLOCK
 AND EXTEND TIME TO INDICT**

15 The government initiated this felony case via complaint. Although 18 U.S.C.
 16 § 3161(b) requires that an indictment issue within 30 days from a defendant’s arrest or the
 17 service of summons, D. Ariz. General Order 20-12 (issued March 16, 2020) has suspended
 18 grand jury proceedings until April 17, 2020. This General Order issued to address the same
 19 public health and other reasons related to COVID-19 described in General Order 20-10.
 20 General Order 20-10 was superseded by General Order 20-13 on March 18, 2020 and
 21 General Order 20-15 on March 20, 2020. General Order 20-15 describes the increasing
 22 concerns surrounding COVID-19 and suspends all criminal trials until after May 4, 2020.

23 The complaint in this case issued prior to March 16, 2020. 18 U.S.C. § 3161(b)
 24 would therefore ordinarily require presentment to the grand jury during the time period
 25 between March 16 and April 17, 2020. However, because no grand jury will be in session
 26 until the week of April 20, 2020 due to General Order 20-12, the government requests that
 27 the Court extend the time for presentment to the grand jury for 40 days and exclude the
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1 time period between March 16, 2020 and April 24, 2020, from the speedy trial clock,
2 pursuant to 18 U.S.C. § 3161(h)(7)(A).

3 Although General Orders 20-10, 20-12, 20-13, and 20-15 address a district-wide
4 health concern, the Supreme Court has emphasized that the Speedy Trial Act's ends-of-
5 justice provision "counteract[s] substantive openendedness with procedural strictness,"
6 "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547
7 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under"
8 § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.* at 509;
9 *see also United States v. Pollock*, 726 F.2d 1456, 1461 (9th Cir. 1984) (holding Speedy
10 Trial Act ends-of-justice provision requires on-the-record findings for pre-indictment
11 delay).

12 Consistent with General Order 20-12 and 18 U.S.C. § 3161(h)(7)(A), the
13 government therefore moves the Court to exclude time between March 16, 2020 and April
14 24, 2020, and any additional period of time should General Order 20-12 be extended or
15 renewed as a result of COVID-19. Although the Speedy Trial Act does not specifically
16 address the situation, this Court has the discretion to exclude time in a given case based on
17 pandemics, natural disasters, or other emergencies. *See Furlow v. United States*, 644 F.2d
18 764 (9th Cir. 1981) (affirming two-week ends of justice continuance following eruption of
19 Mt. St. Helens).

20 As General Order 20-10 describes and General Order 20-12 incorporates, the
21 President of the United States has declared a public health emergency in response to the
22 spread of the virus, and the Governor of the State of Arizona has declared a public health
23 emergency throughout the state. On March 16, 2020, President Trump released guidelines
24 that call for people to avoid gathering in groups of more than 10 people. Pursuant to Fed.
25 R. Crim. P. 6(a)(1), a grand jury must have 16 to 23 members.

26 Additionally, when grand jury sessions resume, the government will need time to
27 summon a witness to present the case, prepare the required forms, and set aside sufficient
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1 time before the grand jury within its usual scheduled meeting times to present each case
2 affected by the suspension of grand jury proceedings.

3 Pursuant to 18 U.S.C. § 3161(h)(7)(B)(i) and (iii), it is unreasonable to expect return
4 and filing of the indictment when the grand jury is not in session, or immediately upon its
5 return, and the failure to grant an extension is likely to make continuation of the
6 proceedings impossible and result in a miscarriage of justice. The government therefore
7 requests an extension of 39 days from the current indictment deadline.

8 Based on the foregoing, this Court should enter a case-specific order and findings
9 of fact finding excludable delay appropriate in this particular case under the ends-of-justice
10 exception, § 3161(h)(7).

11 Undersigned counsel has contacted defense counsel, Zachary Cain, who does not
12 object to this motion.

13 Respectfully submitted this 26th day of March, 2020.

14 ANTHONY MARTIN
15 Attorney for the United States
16 Acting Under Authority Conferred by 28 U.S.C. § 515

17 s/ Lisa E. Jennis
18 LISA E. JENNIS
19 Assistant United States Attorney
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CERTIFICATE OF SERVICE

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I hereby certify that on the 26th day of March, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing a copy to the following CM/ECF registrants:

APD Zachary Cain

s/ Andrea Flores-Cromwell
U.S. Attorney's Office

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

vs.

Chauncey Hollingberry,
Defendant.

20-3058MJ-001-PHX-MTM

ORDER

Pursuant to 18 U.S.C. § 3161(b) and in light of the date the complaint issued, this case requires presentment to the grand jury between March 16 and April 17, 2020.

In addition, pursuant to D. Ariz. General Order 20-12, all grand jury proceedings have been suspended and the grand jury will not be in session until April 17, 2020.

In addition, Fed. R. Crim. P. 6(a)(1) requires a grand jury to have between 16 and 23 members.

IT IS ORDERED Due to the effect of the public health recommendations on the ability of grand jurors and counsel to be present in the courtroom in light of the recent outbreak of Coronavirus Disease 2019 (COVID-19) and the well-documented concerns surrounding this virus, the time period for presentment to the grand jury in this case will be extended by 40 days from the current indictment deadline. The time period between March 16, 2020, and April 24, 2020, shall be excluded under the Speedy Trial Act. The Court specifically finds that the ends of justice served by ordering the extension outweighs the best interests of the public and any defendant's right to a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A). In addition, pursuant to 18 USC § 3161(h)(7)(B)(i) and (iii), the Court finds

1 that a miscarriage of justice would result if time were not excluded under these unique
2 circumstances, during which it is unreasonable to expect return and filing of the indictment
3 within the period specific in § 3161(b).

4 DATED this _____ day of March, 2020.

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8 HONORABLE MICHAEL T. MORRISSEY
9 United States Magistrate Judge
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