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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

United States of America,

NO. 2:16-CR-01012-SRB

V.

Joseph M. Arpaio,  
Steven R. Bailey,  
Michelle Iafrate, and  
Gerard Sheridan,

**Plaintiff**

**REPLY IN SUPPORT OF  
DEFENDANT ARPAIO'S MOTION  
FOR CONTINUANCE**

### Defendants.

Defendant Joseph M. Arpaio submits this Reply in support of his Motion for Continuance. To be clear, at a minimum, there is agreement among all of the parties that the trial currently scheduled for December 6, 2016, should be continued for at least 120 days. The only disagreement that exists regarding Defendant Arpaio's Motion for Continuance involves when the 120 day period should begin to run. Respectfully, despite the Government's arguments otherwise, Defendant Arpaio is entitled to have a single trial on all of the charges brought against him stemming from Judge Snow's criminal referral. As such, until the Government has made a determination of all the charges it intends to bring against Defendant Arpaio arising out of Judge Snow's criminal referral, the Court should defer running the agreed upon 120 day continuance.

1       **I. A SINGLE TRIAL OF ALL THE ISSUES ARISING OUT OF JUDGE**  
 2       **SNOW'S CRIMINAL REFERRAL IS WARRANTED.**

3                  To the extent that the Government argues that a delay is unreasonable  
 4 because a trial involving Defendant Arpaio arising out of the violation of the Court's  
 5 preliminary injunction is unrelated, factually, to Judge Snow's findings regarding Dennis  
 6 Montgomery evidence, the Government misses the point. Defendant Arpaio submits that  
 7 to the extent the Government decides to charge Defendant Arpaio with any additional  
 8 claims arising out of his violation of the preliminary injunction, even under the  
 9 Government's authority, that would arise out of the same set of operative facts and would  
 10 require it be brought in the same trial. *See e.g., United States v. Snell*, 627 F.2d 186, 189  
 11 (9th Cir. 1980); *Sanchez v. United States*, 341 F.2d 225, 229 (9th Cir. 1965); *see also*  
 12 *Borchardt v. United States*, 469 U.S. 937, 945 (1984) ("The Double Jeopardy Clause  
 13 guarantees that all charges arising out of the same criminal act will be brought both at the  
 14 same time and in the same proceeding."). Given the haste that the Government has  
 15 chosen to proceed in this action, it is unknown whether the Government will bring any  
 16 additional charges stemming from Judge Snow's criminal referral of Defendant Arpaio  
 17 involving his preliminary injunction in *Melendres*. To the extent the Government decides  
 18 to do so, Defendant Arpaio submits that he is entitled to a single trial on those issues.

19                  Defendant Arpaio also submits that although the facts surrounding the  
 20 violation of the preliminary injunction and the Montgomery evidence are different, they  
 21 both arise out of the same contempt proceeding, were contained in the same findings of  
 22 fact, and arise out of the same criminal referral. Given the close nexus of the development  
 23 of these facts and that Judge Snow's criminal referral references both the violation of the  
 24 preliminary injunction and the Montgomery evidence as a basis for a criminal contempt  
 25 referral, Defendant Arpaio also submits that a single trial on all of the issues stemming  
 26 from Judge Snow's criminal referral is warranted. *See e.g., United States v. Widergren*,  
 27 C-94-20452-JW, 1995 WL 249266, at \*3 (N.D. Cal. Apr. 25, 1995), aff'd, 70 F.3d 121  
 28 (9th Cir. 1995) ("Although technically severed, the contempt and fraud charges were

1 brought in the same indictment and were tried simultaneously in the same courtroom. As a  
 2 result, all the charges were part of the same proceeding.”); *see also Borchardt v. United*  
 3 *States*, 469 U.S. at 945 (quoting *Ashe v. Swenson*, 397 U.S., at 455 n. 11, 90 S.Ct., at 1200  
 4 n. 11. (BRENNAN, J., concurring)) (“The defendant at the very least is entitled to be  
 5 ‘informed at one time of all the charges on which he will actually be tried,’ so that he has  
 6 a full opportunity to choose between his right to venue in separate districts and his right to  
 7 a single trial on all related charges.”).

8 In addition, Defendant Arpaio is concerned about his ability to make a  
 9 decision on whether he may need to assert a Fifth Amendment privilege regarding any  
 10 testimony that may be elicited during this proceeding. Given that there may be other,  
 11 unknown, charges by the Government regarding Judge Snow’s criminal referral,  
 12 Defendant Arpaio is concerned that evidence and testimony may be developed within this  
 13 action in order to support other actions stemming from Judge Snow’s criminal referral.  
 14 As such, the protection of Defendant Arpaio’s right to intelligently assert his Fifth  
 15 Amendment privilege provides yet another reason that the Government should bring all  
 16 charges stemming from Judge Snow’s criminal referral against Defendant Arpaio in a  
 17 singular proceeding.

18 Finally, a single trial on all of the issues related to Judge Snow’s criminal  
 19 referral serves the interests of judicial economy because it will involve a single trial of all  
 20 of the contempt issues before a single judge and avoids multiple litigations, multiple  
 21 judges, and duplicative discovery.

22 **II. THE REQUESTED CONTINUANCE DOES SERVE THE INTERESTS OF**  
**JUSTICE.**

23 The Government also appears to argue that Defendant Arpaio has proposed  
 24 an indefinite continuance of his trial. [Doc. 51 at 4:3-4]. Importantly, the Government’s  
 25 Response misconstrues Defendant Arpaio’s request in order to conjure prejudice by  
 26 implying that Defendant Arpaio wants an indefinite continuance. Defendant Arpaio’s  
 27 request for continuance does not request an indefinite period of time, but rather requests  
 28

1 that the Court set a trial date 120 days, “commencing at such time as the Government has  
2 announced that no further referrals will be made based upon Judge Snow’s findings or  
3 order.” [Doc. 50]. Pursuant to this request, Defendant Arpaio submitted a proposed order  
4 that provided for a status conference within 60 days to discuss whether the Government  
5 will make any further charging determinations. [Doc. 50-1]. Clearly, this issue could be  
6 discussed during Defendant Arpaio’s proposed status conference, and the Court is free to  
7 determine that the 120 days should begin to run after that status conference or a later date.  
8 Accordingly, the request by Defendant Arpaio is reasonable, and is calculated to balance  
9 the public’s interest in a speedy trial with Defendant Arpaio’s right to prepare an adequate  
10 defense.

11 **III. THE GOVERNMENT’S SUGGESTION REGARDING A BENCH TRIAL.**

12 Finally, the Government’s Response appears to argue that imposition of a  
13 bench trial will relieve Defendant Arpaio of trial preparation involving jury selection and  
14 relax the need for extensive pretrial briefing on evidentiary issues. As this Court has  
15 already noted, however, this remains an open issue that Defendant Arpaio intends on  
16 extensively briefing for the Court’s review. [See Doc. 27, 10-11-16 Status Conference at  
17 16, 38-40]. As such, Defendant Arpaio submits that the alleged time savings, if any,  
18 involved in a bench trial should not be considered as a factor in deciding when to begin  
19 the 120 day continuance.

20 In addition, while the Government argues that much of the evidence in the  
21 underlying trial will not be at issue in the one currently set, given the Government’s  
22 refusal (to date) to commit that this will be the only charge stemming from Judge Snow’s  
23 criminal referral regarding the violation of the preliminary injunction, it is difficult to  
24 discern what evidence will be necessary for the trial in this matter at this time. Moreover,  
25 it is also unknown what new evidence and testimony will be developed during the  
26 discovery period in this action that will mandate additional and new testimony in this  
27 proceeding. Accordingly, the Government’s argument that Defendant Arpaio does not  
28 need additional time to prepare his defense because the evidence is already largely

1 developed and that undersigned counsel is already familiar with the record reveals the  
2 Government's presumptuous and cavalier approach to the rights of a criminal defendant to  
3 prepare a robust defense to charges, some of which are yet to be disclosed.

4 **IV. CONCLUSION.**

5 Based on the foregoing, Defendant Arpaio respectfully requests that the  
6 Court continue the trial currently set for December 6, 2016 for 120 days, commencing at  
7 such time as the Government has announced that no further referrals will be made based  
8 upon Judge Snow's findings or orders.<sup>1</sup>

9  
10 RESPECTFULLY SUBMITTED this 17th day of November 2016.

11 JONES, SKELTON & HOCHULI, P.L.C.  
12  
13 By: /s/ A. Melvin McDonald  
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14 Attorneys for Defendant Joseph M. Arpaio  
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17  
18 **CERTIFICATE OF SERVICE**  
19 I hereby certify that on this 17th day of November 2016, I electronically  
20 filed the foregoing filing with the Clerk of Court through the CM/ECF System which  
21 will send notification of such filing to the attorneys of record for the defendants.  
22  
23  
24  
25  
26

27 /s/Karen Gawel  
28

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<sup>1</sup> Again, Defendant Arpaio reserves the right to request the Court to further continue this matter, as necessary, to the extent the Government contemplates additional charges arising out of Judge Snow's criminal referral.