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12  
13 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

14 United States of America,  
15  
16 Plaintiff,

17 v.

18 Joseph M. Arpaio,  
19 Defendant.

No. CR-16-01012-PHX-SRB

**GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION TO STAY  
PROCEEDINGS**

20  
21 Six days before trial is scheduled to begin and for the third time in four months, the  
22 defendant asks the Court to stay proceedings. ECF No. 166 (Def. Mot. to Stay; filed June  
23 20, 2017); ECF No. 106 (same; filed March 24, 2017); ECF No. 134 (same; filed April 11,  
24 2017). The defendant has simultaneously asked the Supreme Court to stay the proceedings  
25 in this case. *See* Ex. A attached (filed May 24, 2017). Additionally, the defendant has  
26 sought and secured three trial continuances, delaying the trial for more than six months.  
27 *See* ECF No. 55, 71, 136. The defendant identifies no compelling reason for further  
28 postponement in this criminal contempt proceeding. This Court should therefore deny the

1 defendant's stay motion.

2 Implicit in this Court's inherent authority to control its docket is the power to stay  
3 proceedings. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The party seeking the  
4 stay—the defendant here—bears the burden of establishing that a stay is warranted.  
5 *Clinton v. Jones*, 520 U.S. 681, 708 (1997). Relevant considerations for a court weighing  
6 a stay request include: (1) “the possible damage” that may result if the stay is granted; (2)  
7 the “hardship or inequity” involved in requiring a party to proceed; and (3) whether a stay  
8 will simplify or complicate the “orderly course of justice.” *CMAX, Inc. v. Hall*, 300 F.3d  
9 265, 268 (9th Cir. 1962). The defendant cannot carry his burden to justify a stay here.

10 As an initial matter, the defendant's invocation (Mot. 3) of “judicial economy” rings  
11 hollow. The defendant has repeatedly sought to postpone his trial, and the current stay  
12 motion is another example. The defendant asks the Court to stay his fast approaching trial  
13 given the possibility that the Supreme Court will court grant his mandamus petition. But  
14 mandamus is a “drastic and extraordinary” remedy, *Cheney v. U.S. Dist. Court. for the*  
15 *Dist. of Columbia*, 542 U.S. 367, 380 (2004) (quoting *Ex Parte Fahey*, 332 U.S. 258, 259–  
16 260 (1947)), and “only exceptional circumstances amounting to a judicial usurpation of  
17 power” or a “clear abuse of discretion” justifies “invocation of this extraordinary remedy,”  
18 *Will v. United States*, 389 U.S. 90, 95 (1967). The Ninth Circuit has already denied the  
19 defendant's mandamus petition, and the defendant identifies no reason why the Supreme  
20 Court, which grants mandamus relief only as a matter of “discretion sparingly exercised,”  
21 S. Ct. R. 20.1, is likely to come to a different conclusion. More to the point, the defendant  
22 cites no case—and the government is aware of none—in which a court has granted a stay  
23 pending the Supreme Court's decision on a mandamus petition.

24 The defendant also fails to disclose the core contradiction in his effort to procure  
25 mandamus relief. His petition before the Ninth Circuit and the Supreme Court argued that  
26 he is entitled to such relief to vindicate his right to a jury trial under 18 U.S.C. §§ 402 and  
27 3691. Before neither court did he explain, as he does in this motion to stay, that his “jury-  
28 trial” claim is in fact an effort to have his case dismissed as time-barred. *See Mot. at 4*

1 (arguing that if Section 402 applies, the statute of limitations has run). But mandamus  
2 relief is unavailable for a motion to dismiss the indictment, whether on statute-of-  
3 limitations grounds, *see DeGeorge v. U.S. District Court*, 219 F.3d 930, 934–935 (9th Cir.  
4 2000) (mandamus unavailable for claim that an indictment is time-barred), or otherwise,  
5 *see United States v. Bird*, 359 F.3d 1185, 1189–1190 (9th Cir. 2004) (mandamus  
6 unavailable to seek dismissal of indictment). In short, the defendant’s central claim for  
7 staying his impending trial—that the Supreme Court may grant him mandamus relief—  
8 hinges on a fabrication. That is no reason to postpone the trial.

9       Moreover, none of the factors identified in Ninth Circuit case law favor granting a  
10 stay here. A stay of the proceedings will result in nontrivial damage. *See CMAX, Inc.*, 300  
11 F.3d at 268 (court should consider “possible damage” of granting stay). The government  
12 has assembled its witnesses and proof; presumably the defendant has as well; and this Court  
13 has set aside time on its calendar for a two-week trial in this matter. The defendant will  
14 not suffer “hardship and inequity” by proceeding to trial. *See id.* There is no risk that  
15 “inconsistent rulings” (*see Mot. at 4*) will result in the waste of valuable resources any  
16 more than with any trial. If the defendant is convicted, he can press his time-barred claim  
17 on appeal; if he prevails there, the contempt charge will be dismissed. Finally, a stay will  
18 do nothing to facilitate the “orderly course of justice.” *See CMAX, Inc.*, 300 F.3d at 268.  
19 That consideration applies where, for example, the Supreme Court has granted certiorari  
20 in one case that directly affects the outcome in another case. *See, e.g., Larroque v. First*  
21 *Advantage Lns Screening Solution, Inc.*, No. 15-cv-04684-JSC, 2016 WL 39787, at \*2  
22 (N.D. Cal. Jan. 4, 2016) (granting stay where pending Supreme Court case could deprive a  
23 party of standing and thereby eliminate the court’s jurisdiction). It does not apply where,  
24 as here, a party has filed a mandamus petition in the Supreme Court that cannot meet the  
25 extraordinary standard cited above and unreasonably hopes that that Court will take action.

26       For the foregoing reasons, the Court should deny the defendant’s motion to stay the  
27 proceedings pending the Supreme Court’s resolution of his mandamus petition.  
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Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing via the CM/ECF system on today's date which will provide notice to counsel of record for the defendant.

/s/ John D. Keller  
John D. Keller  
Deputy Chief