

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

MICHAEL L. BABICH et al.,

Defendants.

Criminal No.: 16-CR-10343-ADB

**DEFENDANTS' MOTION TO CONTINUE
SELF-SURRENDER DATES TO MAY 19, 2020**

Defendants Babich, Burlakoff, Rowan, Simon, Lee, and Kapoor respectfully request that the Court extend their self-surrender dates a second time, in order to provide the Bureau of Prisons (“BOP”) with sufficient time to designate Defendants to appropriate institutions pending the Court’s release of final judgments. In support of their motion, Defendants state as follows:

1. The Court initially ordered each of the Defendants to self-surrender on dates between February 25 and March 5, 2020.

2. On February 12, 2020, the Court continued Defendants’ self-surrender to dates between April 14 and April 16, 2020. *See* Dkt. No. 1223.

3. Final judgments have yet to be entered with respect to any of Defendants pending the Court’s resolution of restitution apportionment. Because final judgments have yet to be entered with respect to any of Defendants, BOP has not begun designating Defendants to appropriate institutions. That process generally takes about six weeks. *See, e.g.*, 1/13/2020 Gurry Sent. Tr. at 51:9–13.

4. If Defendants are required to self-report before BOP has an opportunity to designate them to appropriate facilities, BOP will be required to transport them between facilities when the designation process is complete. That process is both expensive for BOP (and ultimately

taxpayers) and uncomfortable for inmates. If Defendants are required to report before they are designated to appropriate facilities, Defendants may also be compelled to spend time in facilities with higher security classifications than warranted under BOP regulations.

5. The Court has previously indicated its willingness to extend the self-surrender dates to account for the timing of the final judgments. *See* 2/4/2020 Tr. at 97:7–9. Accordingly, Defendants respectfully request that the Court continue their self-surrender dates to May 19, 2020, which should provide enough time for BOP to designate Defendants to an appropriate institution after the final judgments issue. The Court granted identical relief to Defendant Gurry earlier this week. *See* Dkt. No. 1254 (Mar. 10, 2020).

6. Defendants Gurry, Simon, Lee, Rowan, and Kapoor also intend to appeal the Court's denial of their motions to stay their sentences pending appeal. The First Circuit may consolidate these appeals before deciding those appeals, and that process will take some time. Extending Defendants' self-surrender dates for a few weeks will afford the First Circuit sufficient time to resolve Defendants' motions in an orderly fashion.

7. The Government objects to the relief requested in this motion, on the grounds that BOP has not requested more time to process Defendants. Defendants submit that, without final judgments, BOP is not in position to make such a request, and that BOP's standard designation is already substantially less than the time remaining between now and the current surrender dates.

8. Depending on the course of the coronavirus pandemic and individualized circumstances, some of the Defendants may seek additional continuances to self-surrender. But that is an issue for another day. Continuing the self-surrender dates to May 19, 2020 should allow sufficient time between final judgments and self-surrender for BOP designations, and will allow the Court and the parties to obtain much more information on the course of the pandemic.

Dated: March 12, 2020

Respectfully submitted,

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel for Dr. Kapoor have conferred with counsel for the government and that the government's position as to the requested relief is stated in this motion.

/s/ Kosta S. Stojilkovic
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Counsel for Dr. John Kapoor

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be served on all counsel of record through the ECF system.

/s/ Kosta S. Stojilkovic
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