

1 Ashwin J. Ram (SBN 277513)
2 *aram@steptoe.com*
3 **STEPTOE & JOHNSON LLP**
4 633 West Fifth Street, Suite 1900
5 Los Angeles, California 90071
6 Telephone: (213) 439-9400
7 Facsimile: (213) 439-9599

8 *Attorney for Defendant Imaad Shah Zuberi*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 IMAAD SHAH ZUBERI,

15 Defendant.

Case No.: 2:19-cr-00642-VAP
No.: 2:20-cr-00155-VAP

**REPLY MEMORANDUM IN
SUPPORT OF DEFENDANT
ZUBERI'S MOTION TO EXTEND
SURRENDER DATE**

*[Second Declaration of Shaun S.
Daneshrad, Proffer of Attorney David
A. Warrington, and Declaration of
Ashwin J. Ram concurrently filed here-
with]*

The Honorable Virginia A. Phillips

Date: May 3, 2021
Time: 9:00 a.m.
Ctrm: 8A

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION1

II. DISCUSSION.....2

 A. Mr. Zuberi plans to be vaccinated and is consulting with his doctors on which vaccine to receive2

 B. Mr. Zuberi remains at risk of serious complications from COVID-19 in prison.....3

 C. The government’s opposition is based on unfounded, overreaching, and misleading accusations5

 1. Mr. Zuberi is not a flight risk.....6

 2. Mr. Zuberi did not delay transferring the quitclaim deeds7

 3. Mr. Zuberi has not reneged on obligations.....8

 4. The government, not the defense, has delayed defense counsel’s security clearances8

 D. The prosecutor’s apparent animus against Mr. Zuberi has affected the government’s representations to the Court9

 1. The government suppressed material information10

 2. The government’s contention that Mr. Zuberi obstructed justice by deleting emails is false11

III. CONCLUSION12

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

United States v. Ng Lap Seng,
No. S5 15 CRF 206 (VSB), 2021 WL 961749
(S.D.N.Y. Mar. 15, 2021)5

United States v. Quinn,
537 F.Supp.2d 99 (D.D.C. 2008)..... 11

United States v. Sung,
740 F. App’x 878 (9th Cir. 2018)..... 11

Statutes

18 U.S.C. § 3142(c)(1).....6

18 U.S.C. § 3143(a)(1).....6

18 U.S.C. § 3553(a)(6).....1, 10, 11

Other Authorities

COVID-19 Cases, Federal Bureau of Prisons, <https://bit.ly/32tqPmY>
(as of Apr. 14, 2021).....4

*Denise Grady, ‘We Were Flying Blind’: A Dr. ’s Account of a
Woman’s J.&J. Vaccine-Related Blood Clot Case*, The New York
Times, Apr. 16, 2021, <https://nyti.ms/3v3HjhI>2

*If you’ve already had Covid-19, can you contract a new variant?
Here’s what experts say.*, Advisory Board, Feb. 11, 2021,
<https://bit.ly/2QE2fgk>5

*Incarcerated and Infected: How the Virus Tore Through the U.S.
Prison System*, New York Times, Apr. 10, 2021,
<https://nyti.ms/3n1zZ3w>4

Margot Sanger-Katz and Alicia Parlapiano, *Why the Vaccine Safety
Numbers Are Still Fuzzy*, The New York Times, Apr. 16, 2021,
<https://nyti.ms/3sx3TxR>3

1 Maya Sriukrishnan, Docs, *Witnesses Say Lax Procedures Fueled*
 2 *Virus Spread in Federal Jail*, Voice of San Diego (Sept. 28,
 3 2020), <https://bit.ly/2P33nKf>.....5
 4 Non-Prosecution Agreement of Ray LaHood, <https://bit.ly/3swPpxQ> 11
 5 *Lebanese-Nigerian Billionaire and Two Associates Resolve Federal*
 6 *Probe into Alleged Violations of Campaign Finance Laws*, U.S.
 7 Attorney’s Office for Cent. Dist. of Cal. (Mar. 31, 2021),
 8 <https://bit.ly/3gjFOYN>..... 11
 9 *Press Release: Inmate Death at MCC San Diego*, Federal Bureau of
 10 Prisons (Sept. 22, 2020), <https://bit.ly/3aoKysm>.....5
 11 *Roxanne Khamsi, The Blood-Clot Problem is Multiplying*, The
 12 Atlantic, April 16, 2021, <https://bit.ly/2Q797TR>3
 13 *SARS-CoV-2 Variant Classifications and Definitions*,
 14 Centers for Disease Control and Prevention,
 15 <https://bit.ly/3goe3OA>3
 16 *United States v. Chagoury*,
 17 Deferred Pros. Agm., <https://bit.ly/32p93kO> 11
 18 *United States v. Joseph Arsan*,
 19 Deferred Pros. Agm., <https://bit.ly/3ao5HCX> 11
 20 *US COVID-19 Cases Caused by Variants*,
 21 Centers for Disease Control and Prevention,
 22 <https://bit.ly/3syOTPT>3
 23
 24
 25
 26
 27
 28

1 **I. INTRODUCTION**

2 Zuberi's motion to extend his report date is not based "almost entirely on
3 his claim that he has 'not yet been able to receive the COVID19 vaccine,'" as the
4 government claims (Dkt. 351, at 3) ("Opp."). It is based on the high risk of seri-
5 ous health complications or death presented by the pandemic and Mr. Zuberi's
6 multiple comorbidities (Dkt. 350-1, at 1, 3-12) ("Mot."). Though vaccines reduce
7 such risks, they do not eliminate them, particularly given the surge in new vari-
8 ants, some of which reduce vaccine effectiveness. At the same time, one vaccine
9 has been paused because of adverse side effects. As information about these risks
10 rapidly evolves, Mr. Zuberi is consulting with his doctors to determine which vac-
11 cine will best protect him at the least risk.

12 The government does not deny Mr. Zuberi's medical risks or the emerging
13 variant threat. Nor does it deny defense counsel's need for security clearances and
14 access to the record to file a bail pending appeal motion. The government none-
15 theless vociferously opposes any extension of reporting, based on a litany of accu-
16 sations of manipulation and deceit, directed at both Mr. Zuberi and his counsel.
17 These overreaching accusations are unfounded and misleading. But they demon-
18 strate a rancor toward Mr. Zuberi driven by something other than the facts.

19 That apparent animus of the lead prosecutor, Daniel O'Brien, toward
20 Mr. Zuberi has manifested itself in at least two serious nondisclosures. *First*, the
21 U.S. Attorney's Office recently revealed that at the same time AUSA O'Brien was
22 demanding twelve years for Mr. Zuberi, it gave deferred prosecution agreements
23 to three others charged with remarkably similar conduct. The prosecutors did not
24 disclose this to Mr. Zuberi or the Court, despite its obvious materiality to sentenc-
25 ing under 18 U.S.C. § 3553(a)(6). *Second*, the government portrayed Mr. Zuberi
26 as an obstructor of justice based on its claim that he destroyed emails relevant to
27 the government's investigation. But *the U.S. government* deleted emails and texts
28 relevant to this investigation from Mr. Zuberi's devices, and instructed him to

1 eliminate others—facts known to the prosecution since September 2020. Our un-
 2 derstanding, unconfirmed without clearance, is that AUSA O’Brien may have
 3 conceded some of these facts to avoid producing evidence about them.

4 The details and consequences of these nondisclosures are outside the scope
 5 of this motion. But they show strong reason not to credit the government’s accu-
 6 sations. Apart from those unfounded smears, the government offers little reason
 7 on the merits to deny the reasonable extension Mr. Zuberi seeks. They also show
 8 the need for defense clearance before briefing a motion for bail pending appeal,
 9 which the government acknowledges should happen before reporting.

10 **II. DISCUSSION**

11 **A. Mr. Zuberi plans to be vaccinated and is consulting with his** 12 **doctors on which vaccine to receive**

13 In light of Mr. Zuberi’s high risk of complications from numerous comor-
 14 bidities, Mr. Zuberi and his doctors are carefully considering the most current
 15 medical literature before deciding which vaccine he should receive.¹ His physi-
 16 cian states his concerns are “legitimate and justified.”² There is good reason for
 17 such care, as new information emerges about the still-new vaccines. Just last
 18 week, the CDC and FDA recommended pausing the Johnson & Johnson vaccine
 19 due to instances of a rare but severe and sometimes fatal form of blood clotting.³

20 For someone with Mr. Zuberi’s risks, the threat posed by new variants and
 21 the unknown effectiveness of current vaccines against them⁴ requires careful se-
 22 lection. Both the surge of these variants and knowledge of protection against

23
 24 ¹ See Second Decl. of Shaun S. Daneshrad, MD, FACC, ¶¶ 5-7 (Ex. C
 hereto); Opp. Ex. 1.

25 ² See Second Dr. Daneshrad Decl. ¶ 7.

26 ³ See Denise Grady, ‘We Were Flying Blind’: A Dr.’s Account of a
 27 Woman’s J.&J. Vaccine-Related Blood Clot Case, New York Times, Apr. 16,
 2021, <https://nyti.ms/3v3Hjhl>; Dr. Daneshrad Second Decl. ¶ 4.

28 ⁴ See Mot. at 13-16; Dr. Daneshrad Second Decl. ¶ 4.

1 them are rapidly evolving. As of April 10, 2010, there were 20,915 cases of the
2 U.K. variant in the U.S., including 1,001 in California, and 106 in Kansas.⁵ The
3 U.K. and South African variants have “~50% increased transmission,” while the
4 two California variants have “~20% increased transmission.”⁶ The California var-
5 iants have a “moderate reduction in neutralization” by post-vaccine antibodies,
6 though by an unknown amount.⁷ Public health officials are studying these vari-
7 ants’ change in vaccine effectiveness.⁸

8 Adverse-effect information is also rapidly evolving. The number of blood
9 clots associated with the Johnson & Johnson vaccine may go up, as appearance
10 lags a few weeks behind vaccination. “About half of Americans who received the
11 Johnson & Johnson shot got it this month,” and the CDC is waiting to update
12 guidance “to see what happens with this group.”⁹ “[M]ore information is likely to
13 emerge in the coming weeks.”¹⁰

14 In this rapidly changing environment, it is critical that someone with
15 Mr. Zuberi’s risks get the first shot right. It is not simply a matter of scheduling
16 the first available appointment at the nearest CVS. (Opp. at 6 n.8 & Ex. 5.)

17 **B. Mr. Zuberi remains at risk of serious complications from**
18 **COVID-19 in prison**

19 The government does not dispute the risk of severe and potentially fatal
20

21 ⁵ *US COVID-19 Cases Caused by Variants*, Centers for Disease Control and
22 Prevention, <https://bit.ly/3syOTPT>.

23 ⁶ *SARS-CoV-2 Variant Classifications and Definitions*, Centers for Disease
24 Control and Prevention, <https://bit.ly/3goe3OA>.

25 ⁷ *Id.*

26 ⁸ *See US COVID-19 Cases Caused by Variants*, note 5, *supra*.

27 ⁹ Margot Sanger-Katz and Alicia Parlapiano, *Why the Vaccine Safety Num-*
bers Are Still Fuzzy, New York Times, Apr. 16, 2021, <https://nyti.ms/3sx3TxR>.

28 ¹⁰ Roxanne Khamsi, *The Blood-Clot Problem is Multiplying*, The Atlantic,
April 16, 2021, <https://bit.ly/2Q797TR>.

1 complications posed by Mr. Zuberi’s uncontrolled Type 2 diabetes, kidney dis-
2 ease, persistent tachycardia, and hypertension.¹¹ It is beyond serious dispute that
3 prison remains a high-risk environment for one with these risks.

4 The high risk of COVID-19 in prison was not unique to the period “early in
5 the pandemic,” nor was it limited to the “third wave” of Fall 2020, as the govern-
6 ment argues. Opp. 8. The risk is inherent in the forced close quarters of prison.¹²
7 At least 39% of people in federal detention facilities have been infected—a rate
8 433% higher than the general population.¹³ The rate is higher still in the institu-
9 tions to which Mr. Zuberi thought he would be designated: 70% of inmates have
10 tested positive and 24% have recovered at FCI Lompoc; 66% have tested positive
11 and 83% have recovered at FCI Terminal Island (Mot. 7). The numbers at USP
12 Leavenworth, where the government now reports Mr. Zuberi has been designated
13 (a fact not previously communicated to Mr. Zuberi) are not better: 56% of its in-
14 mates have been infected. Opp. 7. Two have died.¹⁴

15 We have not suggested these numbers describe current outbreaks, as the
16 government accuses (Opp. 6). As explained at the BOP pages cited (Mot. 7 &
17 n.23), they are the numbers of current inmates known to have either tested posi-
18 tive or recovered from COVID-19 at some point. But the fact that the BOP re-
19 ports no present infections (Opp. 6, 7) does not mean these institutions are free
20 from risk: “The crowded nature of federal prisons ... presents an outsize risk that
21
22

23 ¹¹ Mot. 11-12; Dr. Daneshrad Decl. ¶¶ 2-9 (Dkt. 350-2); Dr. Daneshrad
24 Nov. 3, 2020 Ltr. (255-9) (under seal).

25 ¹² See Mem. at 5-6.

26 ¹³ *Incarcerated and Infected: How the Virus Tore Through the U.S. Prison*
27 *System*, New York Times, April 10, 2021, <https://nyti.ms/3n1zZ3w>.

28 ¹⁴ See “COVID-19 Cases,” on the BOP’s COVID-19 Coronavirus page,
<https://bit.ly/32tqPmY> (as of April 14, 2021). The above inmate numbers do not
include staff infections, an additional source of transmission risk.

1 the COVID-19 contagion, once it gains entry, will spread,”¹⁵ and spread quickly.¹⁶
2 Moreover, the fact that an inmate recovered from COVID-19 does not make him
3 “immune” (Opp. 6)—the degree and duration of immunity resulting from prior in-
4 fection are unknown, and new variants in particular present risk of reinfection.¹⁷

5 Nor are the BOP’s testing and quarantine procedures (Opp. 7) a secure
6 firewall against such spread. That protocol did not prevent a November 2020 out-
7 break at MCC San Diego that infected 400 of MCC’s 554 detainees.¹⁸ A 47-year-
8 old inmate, “who had long-term, pre-existing medical conditions which the CDC
9 lists as risk factors for developing more severe COVID-19 disease,” died.¹⁹

10 **C. The government’s opposition is based on unfounded,**
11 **overreaching, and misleading accusations**

12 The government does not deny the surge in more-contagious, potentially
13 vaccine-resistant variants, or Mr. Zuberi’s serious health risks. Instead, it bases its
14 opposition almost entirely on unsubstantiated accusations of deceit and defiance,
15 including accusing counsel of mischaracterizing facts to the Court. The accusa-
16 tions are unfounded and misleading. They also illustrate a “no quarter” approach
17 that appears motivated by animus beyond the facts or merits.

18
19 ¹⁵ *United States v. Ng Lap Seng*, No. S5 15 CRF 206 (VSB), 2021 WL
20 961749, at *4 (S.D.N.Y. Mar. 15, 2021) (citation omitted).

21 ¹⁶ *See id.* (noting that during a December 2020 outbreak, “the number of
22 confirmed cases at FCI Allenwood Low grew from 5 to 136 in just three weeks”).

23 ¹⁷ *If you’ve already had Covid-19, can you contract a new variant? Here’s*
24 *what experts say.*, Advisory Board, Feb. 11, 2021, <https://bit.ly/2QE2fgk> (“Previ-
25 ous infection does not give you a free pass.... A substantial risk of reinfection re-
26 mains.”) (quoting Dr. Stuart Sealfon of Mount Sinai’s Icahn School of Medicine).

27 ¹⁸ *See Maya Srikrishnan, Docs, Witnesses Say Lax Procedures Fueled Vi-*
28 *rus Spread in Federal Jail*, Voice of San Diego (Sept. 28, 2020),
<https://bit.ly/2P33nKf>.

¹⁹ *Press Release: Inmate Death at MCC San Diego*, Federal Bureau of Pris-
ons (Sept. 22, 2020), <https://bit.ly/3aoKysm>.

1 **1. Mr. Zuberi is not a flight risk**

2 To permit a defendant to self-report, the Court must “find[] by clear and
3 convincing evidence that the person is not likely to flee ... if released [on condi-
4 tions] under section 3142[(c)].” 18 U.S.C. § 3143(a)(1). At sentencing, AUSA
5 O’Brien proposed allowing Mr. Zuberi to self-surrender, with added conditions
6 (an ankle bracelet and additional bond). Sent. Tr. 58, 63. That proposal neces-
7 sarily conceded that on those conditions, Mr. Zuberi is not a flight risk. This
8 Court necessarily so found, by allowing continued release. *See* § 3143(a)(1).

9 Mr. Zuberi’s motion pointed out these simple, uncontroversial facts. Mot.
10 2:15-17 & n.7. The prosecutor now protests, “Defendant falsely states that the
11 government has acknowledged that defendant presents no risk of flight” (Opp. 8),
12 omitting the accurate qualification “On his current conditions of release” (Mot.
13 2:15), and overlooking the necessary truth of the statement: if the government had
14 not believed its proposed conditions were sufficient to prevent flight, then it
15 would have requested immediate detention.

16 As evidence that it believes Mr. Zuberi is a flight risk, the government
17 quotes argument from its post-sentencing motion to modify bond conditions.
18 Opp. at 8-9. But that motion simply asked to add a curfew and a travel restriction.
19 Dkt. 328 at 1-2. Like the government’s proposal the day before, it necessarily
20 conceded those conditions were sufficient to prevent flight under § 3143(a)(1) and
21 § 3142(c)(1). The government’s quoted argument—which admits that Mr. Zuberi
22 “has honored the terms of his bond conditions prior to sentencing” (Opp. 9)—does
23 not show any flight risk, much less an “exacerbated” one (Opp. 8).

24 Undeterred, the government claims Mr. Zuberi may be “testing the waters”
25 for possible flight. These imagined “tests” were: (1) asking to stay overnight dur-
26 ing a permitted Orange County trip, followed by compliance when the officer said
27 no (Opp. 4; O’Brien Decl. ¶ 4), and (2) two instances where Mr. Zuberi was late
28 arriving home after all-day meetings with his defense team. Opp. 4 & Ex. 2 (Dkt.

1 351-2). After the probation officer suggested the parties consider extending
 2 Mr. Zuberi's hours to meet with his lawyers, counsel sought such a stipulation, but
 3 was rebuffed by AUSA O'Brien. *Id.* AUSA O'Brien admits counsel's request
 4 was "within [defendant's] rights," but posits that the reason—to allow more time
 5 for attorney-client debriefing—was "spurious," and evidence of bad faith, testing
 6 of Mr. Zuberi's "restraints," and possible "inclination to flee." Opp. 4.

7 Two missed curfews while meeting with defense counsel, though regretta-
 8 ble, are not evidence of intent to flee. Neither is a denied request to relax curfew,
 9 followed by compliance. And an attorney's request for more time to meet with
 10 his client is hardly bad faith. AUSA O'Brien's overheated imagination is no basis
 11 for inferring flight risk, dilatory purpose, or intent to flout court orders. Opp. 3-5.

12 **2. Mr. Zuberi did not delay transferring the quitclaim deeds**

13 AUSA O'Brien's claim that Mr. Zuberi deliberately delayed transferring his
 14 quitclaim deeds by more than a month (Opp. 4-5) is specious. On March 4 and 5,
 15 undersigned counsel tendered quitclaim deeds that his prior counsel believed com-
 16 plied with the order.²⁰ From then through March 11, the parties conferred about a
 17 potential ambiguity in the order regarding the form of the deeds.²¹

18 On March 11, 2021, AUSA O'Brien told defense counsel an IRS agent
 19 would provide an address to deliver *revised* deeds, but counsel did not hear from
 20 the agent. After defense counsel followed up, the agent admitted having missed
 21 AUSA O'Brien's original email, and provided the address.²² Despite admitting
 22 "the IRS was tardy in informing defense counsel of [the] mailing address,"²³ the
 23 prosecutor still tells the Court the delay was deliberate defiance *by Mr. Zuberi*.

24
 25
 26 ²⁰ See the Mar. 4-5 e-mail correspondence in pages 1-5 of Ex. B hereto.

27 ²¹ See AUSA O'Brien Decl. ¶ 6 & Exs. 3, 4A (Dkts. 351, 351-3, 351-4).

28 ²² See the e-mail correspondence contained in Opp. Ex. 4A.

²³ AUSA O'Brien Decl. ¶ 6.

1 Opp. at 4-5 & n.5. AUSA O'Brien's distorted view of "reality" is transparent,
2 and has permeated the handling of this case.

3 **3. Mr. Zuberi has not reneged on obligations**

4 Mr. Zuberi's continuing to raise money to satisfy restitution is no attempt to
5 "renege on plea and sentencing obligations." (Opp. 7). Mr. Zuberi is actively
6 raising funds to satisfy the judgment against him, and he reasonably expects this
7 debt to be paid in full by May 3, 2021.²⁴

8 Nor has Mr. Zuberi "reneged" on his obligation to file a FARA registration
9 under his plea agreement (Opp. 7). Mr. Zuberi's plea agreement requires that he
10 register and amend any deficiencies in existing FARA filings for "any and all ac-
11 tivities, past or present" that require so. Dkt. 5 at 4. The government presumably
12 is referring to its claim that certain federal-candidate contributions reported to
13 have been made by others were really from Mr. Zuberi and should be disclosed in
14 a supplemental FARA filing. Mr. Zuberi contested that claim, as to which there
15 was no finding. Given this fact, Mr. Zuberi cannot attest to the veracity of any
16 FARA supplement taking credit for contributions he did not make. Such an attes-
17 tation would be a crime. To the extent the government is claiming other FARA
18 violations, Mr. Zuberi did not plead to any such violations and no such violations
19 exist. The Court did not find otherwise at sentencing.²⁵

20 **4. The government, not the defense, has delayed defense**
21 **counsel's security clearances**

22 Finally, the government does not contest defense counsel's needing clear-
23 ance to review the record before briefing a bail pending appeal motion, but it ac-
24 cuses that "[h]ere too, the defense is responsible for any delay." Opp. 9. The
25 government's blame is 180 degrees misplaced.

26
27 ²⁴ See Declaration of Ashwin J. Ram, ¶ 2.

28 ²⁵ See Proffer of David A. Warrington.

1 Lead defense counsel entered his appearance on March 4, 2021. (Dkt. 334.)
2 He then sent daily emails to the prosecutors asking to discuss clearance, each pro-
3 posing a call that day or the next. Each time, the government put off the call—first
4 until all counsel entered appearances, then until prior counsel withdrew, then until
5 the substitution of counsel was filed, then until March 12 or “early next week.”²⁶
6 The defense met each move of the goalposts within a day. By the time counsel
7 met on March 15, eleven days had passed at the government’s insistence.

8 When DOJ’s Litigation Security Group forwarded investigation request
9 forms, counsel returned them the same day. Mot. 15 n.54. Three defense counsel
10 completed their SF86 applications, which require ten years of detailed biograph-
11 ical data and extensive questions and answers about various risk information,
12 within one, five, and eight days respectively. Dkt. 351-1 Ex. 1 at 1. Mr. Ram,
13 who held a security clearance at the U.S. Attorney’s Office and is eligible for ex-
14 pedited renewal, had technical difficulty, and submitted it on April 11. *Id.*

15 AUSA O’Brien’s accusation of defense delay—his only reason for oppos-
16 ing Defendant’s motion—is baseless. His consistent pattern of overreaching accu-
17 sations, without seriously disputing the merits of the defense’s reasonable request
18 to protect Mr. Zuberi’s health, safety, and right to assistance of counsel, does not
19 support flatly rejecting any extension as the government urges. Instead, it reveals
20 an unrelenting aggression against Mr. Zuberi that is unexplained by the facts.

21 **D. The prosecutor’s apparent animus against Mr. Zuberi has**
22 **affected the government’s representations to the Court**

23 AUSA O’Brien’s pattern of animus against Mr. Zuberi is reinforced by two
24 troubling nondisclosures. *First*, the prosecution did not disclose that at the same
25 time it was urging a twelve-year sentence for Mr. Zuberi, the U.S. Attorney’s Of-
26
27

28 ²⁶ See the e-mail correspondence in Ex. B hereto.

1 fice granted deferred prosecution to three defendants charged with strikingly simi-
2 lar conduct—information obviously material under 18 U.S.C. § 3553(a)(6). *Sec-*
3 *ond*, the government urged a harsh sentence based on Mr. Zuberi’s deletion of
4 emails. But the prosecutor resisted disclosure of evidence that another part of the
5 government deleted texts and emails from Mr. Zuberi’s devices, instructed
6 Mr. Zuberi to delete texts and emails from other devices, and urged Mr. Zuberi to
7 ensure that certain emails be eliminated from his email accounts.²⁷

8 Though these matters are outside the scope of this motion, they give grave
9 reason to doubt AUSA O’ Brien’s overheated accusations of deceit and bad
10 faith—the bulk of the government’s arguments in opposition. The e-mail deletion
11 issue also confirms the need for defense counsel to receive clearance and be able
12 to assess the record before briefing Mr. Zuberi’s motion for bail pending appeal.

13 **1. The government suppressed material information**

14 On March 18, 2020, the government told this Court that Mr. Zuberi’s FECA
15 violations represented “efforts to corrupt democratic processes and institutions
16 while acting as an agent for foreign interests.”²⁸ Because of this, AUSA O’Brien
17 urged that “[t]his case merits a significant sentence not only to punish Zuberi’s ex-
18 tensive conduct but also to deter those who would embark on similar schemes.”

19 At the same time, unknown to Mr. Zuberi (or, to our knowledge, the Court),
20 this U.S. Attorney’s Office entered into deferred prosecution agreements (under
21 seal) with a foreign national and two co-conspirators who provided \$180,000 to
22 four different federal political candidates, including \$100,000 in donations to a
23

24
25 ²⁷ Counsel has formally requested that the government immediately identify
26 and disclose all information that would tend to show that Mr. Zuberi’s convictions
27 or sentence rest in any part on evidence or information submitted to the Court that
28 This may be the proverbial the tip of the iceberg.

²⁸ Dkt. 87 at 18.

1 then-Presidential candidate.²⁹ The Office also entered into a non-prosecution
 2 agreement with a public official who received an unrelated payment from one of
 3 those conspirators, knew it was funded by a foreign national, willfully omitted the
 4 payment from ethics disclosures, then lied to the FBI about it.³⁰ The government
 5 entered these agreements in secret on October 20, 2019 (shortly after Mr. Zuberi's
 6 plea agreement) and December 4, 2019 (shortly after his guilty plea), but did not
 7 reveal them publicly until March 31, 2021, after Mr. Zuberi was sentenced.³¹

8 The prosecutor has a *Brady* obligation to disclose all favorable evidence
 9 material to punishment. That plainly includes evidence relevant to the need to
 10 avoid unwarranted sentence disparities under 18 U.S.C. § 3553(a)(6).³² Despite
 11 its obvious materiality, the prosecution did not tell either Mr. Zuberi or the Court
 12 that at the same time it argued Mr. Zuberi's plea to campaign finance violations
 13 funded by foreign nationals merited twelve years in prison, it granted deferred
 14 prosecution to a different foreign national accused of the same offenses.

15 **2. The government's contention that Mr. Zuberi obstructed**
 16 **justice by deleting emails is false**

17 AUSA O'Brien also pressed the Court to enhance the defendant's sentence
 18 for the deletion of emails potentially relevant to the government's investigation,
 19 despite knowing at least since September 2020 that during meetings with the de-
 20 fendant, an agency of the United States deleted emails and text messages that were

21
 22 ²⁹ See *Lebanese-Nigerian Billionaire and Two Associates Resolve Federal*
 23 *Probe into Alleged Violations of Campaign Finance Laws*, U.S. Attorney's Office
 24 for Cent. Dist. of Cal. (March 31, 2021), <https://bit.ly/3gjFOYN>; *United States v.*
 25 *Chagoury*, Deferred Pros. Agm. at 2, <https://bit.ly/32p93kO>; *United States v. Jo-*
seph Arsan, Deferred Pros. Agm., <https://bit.ly/3ao5HCX>.

³⁰ Non-Prosecution Agreement of Ray LaHood, <https://bit.ly/3swPpxQ>.

³¹ See USAO press release, note 29, *supra*.

³² See *United States v. Sung*, 740 F. App'x 878, 880 (9th Cir. 2018) (vacat-
 27 ing sentence for failure to consider disparity); *United States v. Quinn*, 537
 28 F.Supp.2d 99 (D.D.C. 2008) (plea deal showing disparity was *Brady* information).

1 potentially relevant to the government’s investigation and helpful to the defendant
2 from devices owned or used by the defendant. That same agency instructed the
3 defendant to delete emails from other devices. Yet, AUSA O’Brien asked the
4 Court to punish the defendant severely to deter others from destroying emails
5 sought in a criminal investigation, while resisting disclosure of evidence that
6 would show such deterrence came at the expense of punishing the defendant for
7 following the instructions of the United States government.

8 We understand there may be information relevant to the extent of the gov-
9 ernment’s knowledge and acceptance of these facts in the classified record and re-
10 lated materials. The central relevance of these facts to the government’s theory
11 that Mr. Zuberi obstructed justice confirms counsel’s need to receive clearance
12 and be able to assess these facts, before briefing a motion for bail pending appeal.

13 The government acknowledges that counsel should be afforded the oppor-
14 tunity to obtain clearances and assess the record before Defendant’s surrender
15 date, and claims that should be readily doable “[g]iven the very limited classified
16 record.” Opp. 10. We believe that record may be limited precisely because the
17 government stipulated or conceded certain facts to avoid evidentiary disclosure
18 and prevent an adversary challenge. We further believe some of those conceded
19 facts contradict the government’s obstruction narrative. We cannot know more
20 without clearance.

21 **III. CONCLUSION**

22 For all of the foregoing reasons, this Court should extend Mr. Zuberi’s re-
23 port date for a period of 90 days, to August 23, 2021.

24 Dated: April 19, 2021

Respectfully submitted,

25 **STEPTOE & JOHNSON LLP**

26
27 By: /s/ Ashwin J. Ram

Ashwin J. Ram

28 *Attorney for Defendant Imaad Shah Zuberi*