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1 FOR PUBLICATION

2
3 IN THE SUPERIOR COURT
4 FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

5 COMMONWEALTH OF THE
6 NORTHERN MARIANA ISLANDS,

7 Plaintiff,

8 v.

9 EDITH ELEANOR
DELEON GUERRERO,

10 Defendant.

) TRAFFIC CASE NO. 16-02199
)
) ORDER DENYING DEFENDANT'S
) MOTION TO DISMISS AS THE
) INFORMATION IS SUFFICIENT TO PUT
) THE DEFENDANT ON NOTICE TO THE
) CHARGES AGAINST HER, WHETHER
) THE VEHICLES ARE "GOVERNMENT
) VEHICLES" IS FOR THE ULTIMATE
) FINDER OF FACT TO DETERMINE,
) THE DEFENDANT'S SPEEDY TRIAL
) RIGHT HAS NOT BEEN VIOLATED,
) AND COUNT III IS NOT TIME BARRED
)

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12 I. INTRODUCTION

13 This matter came before the Court on May 2, 2018 on Defendant Edith Eleanor Deleon
14 Guerrero's Motion to Dismiss. The Commonwealth was represented by Assistant Attorney General
15 J. Robert Glass, Jr. and Assistant Attorney General Jonathan Wilberscheid. The Defendant, Edith
16 Eleanor Deleon Guerrero, was present and represented by Assistant Public Defender Heather Zona.¹

17 Based on a review of the filings, oral arguments, and applicable law, the Court **DENIES** the
18 Defendant's Motion to Dismiss.

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24 ¹ At the time of the citation, the Defendant was the Secretary of the Department of Labor. Later, the Defendant became unemployed and thus eligible for representation by the Office of the Public Defender.

1 **II. BACKGROUND**

2 On October 11, 2016, the Defendant was charged by citation² with three violations related to
3 Restriction Upon Use of Government Vehicles: having tinted windows on a government vehicle in
4 violation of 1 CMC § 7406(e); failing to properly mark a government vehicle in violation of 1 CMC
5 § 7406(f); and, failing to put government license plates on a government vehicle in violation of 1
6 CMC § 7406(g)(1). At the time of the citation, the Defendant was the Secretary of the Department
7 of Labor.

8 This matter was initially set for a bench trial on June 7, 2017. *Commonwealth v. Deleon*
9 *Guerrero*, Tr. No. 16-02199 (NMI Super. Ct. Apr. 20, 2017) (Order Vacating Change of Plea and
10 Setting Bench Trial). On June 5, 2017, the Commonwealth filed its Motion for Clarification of
11 Law, asking the Court to clarify whether it would apply the same definition of “government
12 vehicle” applied in *Commonwealth v. Sablan*, Traffic No. 15-00305. At the time, the Defendant was
13 *pro se*, as she was ineligible for representation by the Office of the Public Defender.

14 On August 3, 2017, the Office of the Public Defender was appointed to represent the
15 Defendant, as she had become unemployed and thus eligible for the services of the Office of the
16 Public Defender. *Deleon Guerrero*, Tr. No. 16-02199 (NMI Super. Ct. Aug. 3, 2017) (Minute
17 Order). On or about September 8, 2017, the parties agreed to continue the motion hearing date on
18 the Commonwealth’s Motion for Clarification of Law, which was ultimately heard on January 31,
19 2018.

20 The Court denied the Commonwealth’s Motion for Clarification of Law on February 13,
21 2018. *See Commonwealth v. Deleon Guerrero*, Traffic No. 16-02199 (NMI Super. Ct. Feb. 13,

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23 ² The citation, information, and indictment are all types of charging documents. Law enforcement officers generally
24 issue traffic citations. BLACK’S LAW DICTIONARY 221 (Abridged 9th Ed). Prosecutors generally issue informations.
BLACK’S LAW DICTIONARY 668 (Abridged 9th Ed.). Grand juries generally issue indictments. BLACK’S LAW
DICTIONARY 662 (Abridged 9th Ed.).

1 2018) (Order Denying Commonwealth’s Motion As It is Wholly Deficient and Failed to Articulate
2 the Legal Basis of the Motion). The Court found that the Commonwealth’s motion had failed to
3 articulate the legal basis for its motion, which appeared to be an improper request for an advisory
4 opinion. *Id.* at 4-5. This matter was then set for a bench trial on May 9, 2018.

5 The Commonwealth filed its Information on April 4, 2018. The Information charged the
6 Defendant with: (1) Having tinted windows on a government vehicle in violation of 1 CMC §
7 7406(e); (2) Failing to properly mark a government vehicle in violation of 1 CMC § 7406(f); and,
8 (3) Failing to put government license plates on a government vehicle in violation of 1 CMC §
9 7406(g)(2). Count III of the information charged a different code section than the initial citation—
10 while the citation charged a violation of Section 7406(g)(1), the Information charged a violation of
11 Section 7406(g)(2). Section 7406(g)(1) does not outline a criminal offense, while Section
12 7406(g)(2) does. *Commonwealth v. Gregory Castro*, Traffic No. 17-00814 (NMI Super. Ct. Aug 25,
13 2017) (Order Granting Defendant’s Motion to Dismiss as a Traffic Citation Designed for Traffic
14 Violations, Which Does Not List the Elements of Ethics Violations, Is Insufficient to Put the
15 Defendant on Notice of the Charges In Violation of Defendant’s Constitutional Due Process Rights
16 at 6).

17 On April 20, 2018, the Defendant filed her Motion to Dismiss for Violation of Due Process
18 Right; Pursuant to Rule 12(B); and For Violation of Speedy Trial Right; or in the Alternative, For
19 Dismissal of Count III as Time-Barred. The Defendant attached several pages of discovery to her
20 Motion to Dismiss as Exhibit A. On May 1, 2018, the Defendant filed a Supplemental Brief. The
21 Defendant attached over 130 pages of discovery to her Supplemental Brief as Exhibit 1, explaining
22 that these documents were provided to defense counsel on April 23, 2018. The Commonwealth
23 filed its opposition on May 1, 2018. The Defendant filed a reply on May 2, 2018.

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III. DISCUSSION

In her Motion to Dismiss, the Defendant argues four grounds for dismissal. First, the Defendant argues that the Information failed to put her on notice of the charges against her as required by the Sixth Amendment of the United States Constitution. Second, the Defendant argues that this case must be dismissed as a matter of law since the Commonwealth will be unable to establish that the vehicles were government vehicles under the Commonwealth Code. Third, the Defendant argues that her right to a speedy trial under the Sixth Amendment of the United States Constitution has been violated. Fourth, the Defendant argues that Count III, charging her with a violation of 1 CMC § 7406(g)(2), must be dismissed as time barred. The Court will address each of these arguments in turn.

A. The Information Taken Together With Discovery Provides Sufficient Notice to the Defendant of the Charges Against Her

The Defendant argues that the Information fails to provide sufficient notice of the charges against her. Under the Sixth Amendment of the United States Constitution, “the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation.” U.S. CONST. AMEND. VI. “The Sixth Amendment is satisfied when the information is specific enough to advise the defendant of the charge against him, to enable him to prepare for trial, and to plead the result in bar of a subsequent prosecution for the same offense.” *Commonwealth v. Babauta*, 2001 MP 10 ¶ 12 (citing *Russell v. United States*, 369 U.S. 749, 763-764 (1962)).

The Defendant relies on *Hamling v. United States* to argue that the Information fails to put her on notice of the charges against her. 418 U.S. 87, 117-118 (1974). *Hamling* outlined two constitutional requirements for a charging document: “first, [that it] contains the elements of the offense charged and fairly informs the defendant of the charge against which he must defend, and, second, [that it] enables him to plead an acquittal or conviction in bar of future prosecutions of the

1 same offense.” *United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007) (quoting *Hamling*, 418
2 U.S. at 117).

3 Under *Hamling*, “[i]t is generally sufficient that an indictment set forth the offense in the
4 words of the statute itself, as long as ‘those words of themselves fully, directly, and expressly,
5 without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense
6 intended to be punished.’” *Hamling*, 418 U.S. at 117 (quoting *United States v. Carll*, 105 U.S. 611,
7 612 (1882)). If the “language of the statute” is used to define the offense, “it must be accompanied
8 with such a statement of the facts and circumstances as will inform the accused of the specific
9 offense, coming under the general description, with which he is charged.” *Id.* at 117-118 (quoting
10 *States v. Hess*, 124 U.S. 483, 487 (1888)).

11 In *Hamling*, the indictment was sufficient where the petitioners were charged with an
12 obscenity-related offense where the indictment failed to define “obscenity,” since it is a “legal term
13 of art.” 418 U.S. at 118-119. According to *Hamling*, since obscenity is “a legal term of art” and
14 “[t]he legal definition of obscenity does not change with each indictment; it is a term sufficiently
15 definite in legal meaning to give a defendant notice of the charge against him.” *Id.* at 118 (citing
16 *Roth v. United States*, 354 U.S. 476, 491-492 (1957)). On the other hand, if a charge requires a
17 “specific identification of fact,” the indictment must “do more than simply repeat the language of
18 the criminal statute.” *Id.* (quoting *Russell v. United States*, 369 U.S. 749, 764 (1962)).

19 The Information, however, does not exist in a vacuum—the Information may be taken
20 together with discovery to put the Defendant on notice of the charges against her. *Commonwealth v.*
21 *Li*, Tr. No. 15-00616 (NMI Super. Ct. Sept. 15, 2015) (Order Denying Commonwealth’s Request
22 for Leave to Amend Information as to Count II Since This Count Would Add a Multiplicitous
23 Charge at 7) (hereafter “Li Order”) (citing *Commonwealth v. Joselito Castro*, 2008 MP 18 ¶ 14).
24 “The Commonwealth is required to provide a defendant, through a combination of the information

1 and discovery, with ‘the element of offenses with which he was charged, as well as the underlying
2 facts supporting those charges.’” *Id.* (quoting *Joselito Castro* 2008 MP 18 ¶ 14).

3 In *Commonwealth v. Joselito Castro*, a sexual abuse of a minor case, the information
4 included the statutory language, the alleged victim’s initials, the date, and the allegation that the
5 defendant had touched the minor victim’s breast. 2008 MP 18 ¶ 14. In *Joselito Castro*, the
6 Commonwealth provided “thirty pages of discovery materials,” which the Commonwealth Supreme
7 Court held to be sufficient, when taken together with the information, to give the defendant notice
8 of “the elements of the offenses” and the “underlying facts supporting those charges.” *Id.*

9 In *Li*, the defendant was accused of driving under the influence of alcohol, and the
10 information “provide[d] the statutory language, the elements of each alleged offense, as well as the
11 date.” *Li Order*, Tr. No. 15-00616, at 8. Although the information in *Li* was insufficient on its own,
12 the information together with discovery was found to be sufficient to put the defendant on notice to
13 the charges against him. *Id.* at 9. In *Li*, the Court was not privy to discovery in the case, but the
14 Court had not received any filings from the defendant “indicating that discovery continues to be
15 deficient.” *Id.*

16 In another traffic case, *Commonwealth v. Gregory Castro*, Tr. No. 17-00814, this Court
17 addressed whether traffic citations were sufficient to put defendants on notice of misuse of
18 government vehicle charges. In *Gregory Castro*, this Court held that the traffic citation was
19 insufficient, since “the citation form merely states the code sections alleged to have been violated,
20 without providing any elements or facts.” *Gregory Castro*, Tr. No. 17-00814 (NMI Super. Ct. Aug.
21 25, 2017) (Order Granting Defendant’s Motion to Dismiss as a Traffic Citation Designed for
22 Traffic Violations, Which Does Not List the Elements of Ethics Violations, is Insufficient to Put the
23 Defendant on Notice of the Charges In Violation of Defendant’s Constitutional Due Process Rights
24 at 10). “The Commonwealth is required to list both the offenses charged and their elements, not to

1 merely list the offenses and expect the Defendant to guess the elements of the offenses.” *Id.* (citing
2 *Hamling*, 418 U.S. at 117). A charging document may be supplemented by discovery, but only if
3 “the charging document still provide[s] some basic facts, as well as repeat[s] the statutory language
4 of the offense, as required by *Hamling*.” *Id.* Even if a charging document is deficient, an “[e]rror in
5 the citation or its omission shall not be ground[s] for dismissal of the information . . . if the error or
6 omission did not mislead the defendant to his prejudice.” *Id.* at 13 (quoting NMI R. Crim. P.
7 7(c)(3)).

8 Here, the Information cites to the specific statutory provisions, provides a date range, and
9 makes factual allegations that mirror the statutory language. For Count I, the Information alleges:

10 From on or about December 8, 2013 to October 11, 2016, on Saipan,
11 Commonwealth of the Northern Mariana Islands, the Defendant, **Edith Eleanor**
12 **Deleon Guerrero**, operated or used a government motor vehicle that had tinting
materials on its windows, in violation of 1 CMC § 7406(e), and made punishable by
1 CMC § 7406(e).

13 Information at 1 (emphasis in original).

14 For Count II, the Information alleges:

15 From on or about December 8, 2013 to October 11, 2016, on Saipan,
16 Commonwealth of the Northern Mariana Islands, the Defendant, **Edith Eleanor**
17 **Deleon Guerrero**, operated or used a government vehicle or a government leased
vehicle that was not marked in accordance with 1 CMC § 7406(f), to wit: Defendant
18 operated or used a government vehicle that was not clearly marked as such on both
front doors, in violation of 1 CMC § 7406(f), and made punishable by 1 CMC §
7406(f).

19 Information at 1 (emphasis in original).

20 For Count III, the Information alleges:

21 From on or about December 8, 2013 to October 11, 2016, on Saipan,
22 Commonwealth of the Northern Mariana Islands, the Defendant, **Edith Eleanor**
23 **Deleon Guerrero**, drove, operated, or used a government motor vehicle that did not
bear government license plates, in violation of 1 CMC § 7406(g)(2), and made
punishable by 1 CMC § 7406(g)(2).

24 Information at 2 (emphasis in original).

1 All three counts list the specific statutory provisions, provide a date range, and make factual
2 allegations that mirror the statutory language. In addition, the Defendant has by her own admission
3 received voluminous amounts of discovery from the Commonwealth. The over one hundred and
4 thirty pages of discovery provided to the Defendant, which includes vehicle rental agreements and a
5 spreadsheet outlining which vehicles are alleged to have been rented on which dates, is sufficient,
6 taken together with the Information, to put the Defendant on notice to the charges against her as
7 required by *Hamling* and the Sixth Amendment of the United States Constitution.

8 **B. The Ultimate Finder of Fact Will Determine Whether The Vehicles In Question Are**
9 **“Government Vehicles”**

10 The Defendant argues that this case must be dismissed based on Rule 12(b) of the
11 Commonwealth Rules of Criminal Procedure, since the Commonwealth will be unable to establish
12 that the vehicles in question are not government vehicles as defined by 1 CMC § 7406(a)(2). 1
13 CMC § 7406(a)(2) provides:

14 “Government vehicle” means a vehicle owned or leased by the Commonwealth
15 government or any of its branches or political subdivisions, including autonomous
16 agencies, government corporations, boards, and commissions.

17 This Court previously interpreted the meaning of “a vehicle owned or leased by the Commonwealth
18 government” in *Commonwealth v. Sablan*, Tr. No. 15-00305.

19 In *Sablan*, the Court read 1 CMC § 7406 together with the definition of “owner” under the
20 Vehicle Code, holding that “the term ‘government vehicle’ in 1 CMC § 7406(a)(2) means a vehicle
21 owned by the Commonwealth government or leased by the Commonwealth government for more
22 than twelve months.” Tr. No. 15-00305 (NMI Super. Ct. Jan. 8, 2016) (Order Denying Defendant’s
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1 Motion to Dismiss as 1 CMC § 7406 Is Not Unconstitutionally Vague As Applied, As a
2 Government Vehicle is a Vehicle Owned or Leased by the Commonwealth Government at 5).³

3 The defendant in *Sablan* also moved to dismiss the case under Rule 12(b), arguing that “it is
4 undisputed that the evidence shows that the vehicle is not a governmental vehicle as a matter of
5 law.” *Id.* at 5. The Court denied the motion, noting that “the Court ‘must not invade the province of
6 the ultimate finder of fact.’” *Id.* (quoting *United States v. Nukida*, 8 F.3d 665, 669 (9th Cir. 1993)).
7 “The Court must decide if a factual issue ‘if it is entirely segregable from the evidence to be
8 presented at trial. If the pretrial claim is substantially founded upon and intertwined with evidence
9 concerning the alleged offense, the motion falls within the province of the ultimate finder of fact
10 and must be deferred.’” *Id.* (quoting *Nukida*, 8 F.3d at 669). Since the issue of whether the vehicle
11 in *Sablan* was a government vehicle was “substantially founded upon and intertwined with
12 evidence concerning the alleged offense,” this issue “must be reserved for the ultimate finder of fact
13 at trial.” *Id.*

14 The Court declines to deviate from Its previous analysis in *Sablan*. The issue of whether the
15 vehicles in the present case are government vehicles within the meaning of 1 CMC § 7406(a)(2) is
16 an issue for the ultimate finder of fact to determine at trial. The Court notes that, although over a
17 hundred and thirty pages of discovery have been attached to the Defendant’s Motion to Dismiss and
18 Supplemental Brief, these exhibits have not been admitted to evidence, nor have they been
19 authenticated by witnesses. Further, although defense counsel alleges that it will be impossible for
20 the Commonwealth to establish that the vehicles in question are government vehicles, the
21 representations of counsel are merely representations and are not sworn testimony or evidence.
22 “Although an attorney is an officer of the court and has a duty of candor to the court, the trial

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24 ³ Although *Sablan* was appealed to the Commonwealth Supreme Court, the Commonwealth Supreme Court did not
overturn this Court’s interpretation of the definition of a “government vehicle.” *Commonwealth v. Sablan*, 2016 MP 12
¶ 13 n.10 (“We do not decide whether the court did or did not accurately interpret 1 CMC § 7406(a)(2).”).

1 court's truth-seeking function is best served when the factfinder relies on evidence introduced under
2 oath." *Domingo v. Celis*, 2006 MP 18 ¶ 12 (quoting *Inos v. Inos*, 2015 MP ¶ 10). If "[t]he factual
3 assertion of [an] attorney . . . was not made under oath, nor was the attorney a witness," then "[t]his
4 assertion came solely from the attorney and thus was not testimony or evidence." *Id.* ¶ 13. Here,
5 defense counsel's assertions that these vehicles are not "government vehicles" are merely assertions
6 and are neither testimony nor evidence.

7 **C. The Defendant's Right to a Speedy Trial Has Not Been Violated**

8 Criminal defendants have a right to a speedy trial. NMI CONST. ART. 1 § 4(d) ("There shall
9 be a speedy and public trial."); U.S. Const. amend. VI ("In all criminal prosecutions, the accused
10 shall enjoy the right to a speedy and public trial."). The Defendant argues that the delays in this case
11 have violated her right to a speedy trial.

12 In determining whether a defendant's speedy trial right has been violated, courts apply a
13 balancing test, which weighs the "length of the delay, the reason for the delay, the defendant's
14 assertion of his right, and prejudice to the defendant." *Barker v. Wingo*, 407 U.S. 514, 530 (1972).
15 Two of these factors are fluid: the length of the delay, as well as the prejudice to the defendant.
16 *Robles-Nieves*, 306 P.3d 399, 405 (Nev. 2013). Since this is a balancing test, the Commonwealth
17 "takes the risk that at some point the balance may tip against it." *Id.* (addressing the right to speedy
18 trial in the context of an interlocutory appeal). The Court will address each of the *Barker* factors in
19 turn.

20 **1. Length of the Delay**

21 First, the Court must examine whether the length of the delay is "presumptively
22 prejudicial," since "[u]ntil there is some delay which is presumptively prejudicial, there is no
23 necessity for inquiry into the other factors that go into the balance." *Barker*, 407 U.S. at 530. "[T]o
24 trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial

1 has crossed the threshold dividing ordinary from ‘presumptively prejudicial’ delay, since, by
2 definition, he cannot complain that the government denied him a ‘speedy’ trial if it has . . .
3 prosecuted his case with customary promptness.” *Doggett v. United States*, 505 U.S. 647, 651-652
4 (1992) (internal citations omitted).

5 Generally, a post-accusation delay “approach[ing] one year” is considered “presumptively
6 prejudicial.” *Doggett*, 505 U.S. at 652 n.1. This threshold of presumptive prejudice “does not
7 necessarily indicate a statistical probability of prejudice,” rather it is the threshold for determining
8 when “courts deem the delay unreasonable enough to trigger the *Barker* enquiry.” *Id.*; *Barker*, 407
9 U.S. at 530 (“The length of the delay is to some extent a triggering mechanism.”). Whether a delay
10 is presumptively prejudicial, thus triggering a *Barker* inquiry, “is necessarily dependent upon the
11 peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an
12 ordinary street crime is considerably less than for a serious, complex conspiracy charge.” *Barker*,
13 407 U.S. at 530-531.

14 In the present case, eighteen months have elapsed since the initial citation was issued in
15 October 2016. The Defendant argues that this eighteen-month delay is presumptively prejudicial,
16 since the delay was caused by the Commonwealth’s “decision to file a seemingly frivolous
17 motion,” the Commonwealth’s Motion for Clarification of Law, filed on June 5, 2017, ultimately
18 argued on January 31, 2018. Mot. to Dismiss at 11. The Commonwealth, on the other hand, argues
19 that, since some of the delays were caused by defense requests for continuances, that the delay is
20 not presumptively prejudicial. Opp. at 9-10 (citing *Vermont v. Brillon*, 556 U.S. 81, 85 (2009)). The
21 Commonwealth’s argument that the defendant contributed to the delays is better suited to the
22 *Barker* factor related to who bears responsibility for the delay, rather than whether the delay itself is
23 presumptively prejudicial. Here, the eighteen-month delay since the Defendant was charged by
24 citation is sufficient to trigger the remainder of the *Barker* inquiry.

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2. Reason for the Delay

The second factor, the reason for the delay, is a vital factor and is “[t]he flag all litigants seek to capture.” *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986). Under *Barker*, “different weights should be applied to different reasons” for a delay. 407 U.S. at 531. If the Commonwealth is engaged in “a deliberate attempt to delay the trial in order to hamper the defense,” this would be weighed against the Commonwealth. *Id.* On the other hand, “negligence or overcrowded courts should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.” *Id.* “[D]elays sought by counsel are ordinarily attributable to the defendants they represent.” *Vermont v. Brillon*, 556 U.S. 81, 85 (2009).

Here, eighteen months have elapsed since the Defendant was charged by citation in October 2016. Although some of the delay is attributable to the Commonwealth’s filing of its Motion for Clarification, some delay is also attributable to either the Defendant or her counsel seeking additional time. *See* April 20, 2017 Stipulation; *Deleon Guerrero*, Tr. No. 16-02199 (NMI Super. Ct. Aug. 3, 2017) (Minute Order); *Deleon Guerrero*, Tr. No. 16-02199 (NMI Super. Ct. Sept. 19, 2017) (Order). In this context, where both parties delayed the case to some degree, the factor breaks even and does not favor the Commonwealth or the Defendant.

3. The Defendant’s Assertion of her Speedy Trial Right

The third factor under *Barker* is the Defendant’s assertion of his speedy trial right. 407 U.S. at 530. “The defendant’s assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.” *Id.* at 531-532. If a defendant fails to assert the right to a speedy trial, it will be “difficult for a defendant to prove that he was denied a speedy trial.” *Id.* Here, the Defendant’s first assertion of her speedy trial right was

1 through her Motion to Dismiss, filed April 20, 2018. The Defendant highlights the fact that she was
2 *pro se* for a portion of this case. Mot. to Dismiss at 11. This factor favors the Defendant.

3 **4. The Prejudice Faced by the Defendant**

4 The fourth factor under *Barker* is the prejudice to the defendant. 407 U.S. at 530. The fourth
5 factor under *Barker* is the prejudice to the defendant. 407 U.S. at 530. In *Loud Hawk*, the United
6 States Supreme Court held that the “possibility of prejudice is not sufficient to support [the
7 defendants’] position that their speedy trial rights were violated.” 474 U.S. at 315. In particular, the
8 passage of time is a “two-edged sword” and the deterioration of witness memories of an event
9 would harm the prosecution as well as the defense. *Id.* Since the Commonwealth “bears the burden
10 of providing its case beyond a reasonable doubt,” a delay could “make it difficult or impossible” for
11 the Commonwealth to meet this burden. *Id.* The Court notes that delay harms both parties—the
12 passage of time will make it difficult for both parties to obtain witness testimony, not solely the
13 Defendant or the Commonwealth. Based on the specific facts of this case, in particular because the
14 Defendant is not currently in custody, this factor is neutral and does not favor either the Defendant
15 or the Commonwealth.

16 **5. Summary of the Four *Barker* Factors as to a Defendant’s Speedy Trial Right**

17 In summation, the *Barker* factors weigh in favor of the Commonwealth. The threshold first
18 factor of a “presumptively prejudicial” delay is met, allowing the Court to address the remaining
19 three factors. *Barker*, 407 U.S. at 530. The Court emphasizes that presumptive prejudice “does not
20 necessarily indicate a statistical probability of prejudice,” rather it is the threshold for determining
21 when “courts deem the delay unreasonable enough to trigger a *Barker* enquiry.” *Doggett*, 505 U.S.
22 at 652 n.1. The second factor, the reason for the delay, breaks even between the Commonwealth
23 and the Defendant. The Court emphasizes that the second factor is vital in the *Barker* analysis, as it
24 is “[t]he flag all litigants seek to capture.” *Loud Hawk*, 474 U.S. at 315. The third factor, that the

1 Defendant asserted her speedy trial right, weighs against the Commonwealth. *Barker*, 407 U.S. at
2 530. The fourth factor, the prejudice to the Defendant, does not favor either the Commonwealth or
3 the Defendant, since the risk of witnesses losing memory⁴ of the events cuts against the
4 Commonwealth and could potentially make it difficult or impossible for the Commonwealth to
5 meet its burden. *Id.* As a whole, the analysis of the *Barker* factors favors the Commonwealth. Thus,
6 the Defendant’s right to a speedy trial has not yet been violated.

7 **D. Count III Is Not Time Barred**

8 The Defendant argues that Count III, brought for the first time in the April 4, 2018
9 Information, is time barred. Count III alleges,

10 From on or about December 8, 2013 to October 11, 2016 . . . the Defendant **Edith**
11 **Eleanor Deleon Guerrero**, drove, operated, or used a government motor vehicle
12 that did not bear government license plates, in violation of 1 CMC § 7406(g)(2),
13 and made punishable by 1 CMC § 7406(g)(2).
14 Information at 2 (emphasis in original). The original traffic citation in this case, issued on October
15 11, 2016, charged the defendant with a violation of 1 CMC § 7406(g)(1), which is not an offense.
16 *See Commonwealth v. Gregory Castro*, Tr. No. 17-00814 (NMI Super. Ct. Aug. 25, 2017) (Order
17 Granting Defendant’s Motion to Dismiss as a Traffic Citation Designed for Traffic Violations,
18 Which Does not List the Elements of Ethics Violations, Is Insufficient to Put the Defendant on
19 Notice of the Charges In Violation of Defendant’s Constitutional Due Process Rights at 6)
20 (“Section 7406(g)(1) does not outline a specific offense related to government license plates, nor
21 does it impose a fine or term of imprisonment. Section 7406(g)(2), on the other hand, outlines
22 offenses related to government license plates as well as the related fines and terms of
23 imprisonment.”).

24 ⁴ The Commonwealth has the burden to prove each and every element of the crime. Defendants are presumed innocent and need not call any witnesses or put on a case in chief unless a defendant chooses to do so.

1 6 CMC § 107(b)(2) provides: “A prosecution for an offense which is punishable by
2 imprisonment for six months or less, or by a fine only must be commenced within one year after it
3 is committed.” This one-year statute of limitations does *not* apply to traffic offenses. 6 CMC. §
4 107(b). Traffic offenses are “any violation of a statute, ordinance or regulation relating to the
5 operation or use of motor vehicles and any violation of a statute, ordinance, or regulation relating to
6 the use of streets and highways by pedestrians or by the operation of any other vehicle.” NMI R.
7 Traff. 2(1).

8 In addition to the statute of limitations in 1 CMC § 107(b), the Defendant, as the former
9 Secretary of the Department of Labor, may still be prosecuted for “[a]ny offense based on
10 misconduct in office by a public officer or employee at any time when the defendant is in the same
11 public office or employment or within two years thereafter.” 1 CMC § 107(c)(2). The Defendant
12 held the position of Secretary of the Department of Labor at least until April 20, 2017, when she
13 was a *pro se* litigant. *Deleon Guerrero*, Tr. No. 16-02199 (NMI Super. Ct. Apr. 20, 2017) (Order
14 Vacating Change of Plea and Setting Bench Trial). Sometime between April 2017 and August
15 2017, the Defendant became unemployed, and the Court appointed the Office of the Public
16 Defender to represent her. *Deleon Guerrero*, Tr. No. 16-02199 (NMI Super. Ct. Aug. 3, 2017)
17 (Minute Order). Since the Defendant was the Secretary of the Department of Labor until at least
18 April 2017, the two year statute of limitations outlined in 1 CMC § 107(c)(2) would not expire until
19 April 2019. If a statute of limitations applied to Count III, it would be the two year time frame
20 stated in 1 CMC § 107(c)(2), and since Count III was filed in April 2018, it would be timely under
21 1 CMC § 107(c)(2).

22 Although misuse of government vehicles is codified as an ethics violation in Title 1 of the
23 Commonwealth Code, rather than in the Vehicle Code in Title 9, violations of 1 CMC § 7406 are
24 treated as traffic offenses, since they involve “the operation or use of motor vehicles.” NMI R.

1 Traff. 2(1). Thus, under 1 CMC § 107(b), there is *no* statute of limitations in the present case since
2 this is a traffic offense. Further, if a statute of limitations applied to the Defendant as a former
3 public officer, it would be the two year statute of limitations applied to misconduct in public office
4 cases under 1 CMC § 107(c)(2). Thus, under either theory Count III is not untimely.

5 **IV. CONCLUSION**

6 In summary, the Information is sufficient to put the Defendant on notice to the charges
7 against her as required by *Hamling*. In addition, the issue of whether the vehicles in the present case
8 are government vehicles is an issue for the ultimate finder of fact to determine at trial. Further, the
9 Defendant's right to a speedy trial has not been violated. Finally, Count III is not time barred since
10 there is no statute of limitations for traffic offenses.⁵

11 Accordingly, the Defendant's Motion to Dismiss is **DENIED**.

12
13 **IT IS SO ORDERED** this 7th day of May, 2018.

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16 
17 JOSEPH N. CAMACHO
Associate Judge

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23 _____
24 ⁵ In the alternative, the two-year statute of limitations for current and former public officials, outlined in 1 CMC § 107(c)(2), has not yet elapsed.