

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES OF AMERICA</b>	:	
	:	
v.	:	<b>Case No. 21-CR-175 (TJK)</b>
	:	
<b>ETHAN NORDEAN, et al.</b>	:	
	:	
<b>Defendants.</b>	:	

**UNITED STATES' CONSENT TO CONTINUE TRIAL**

Earlier today, Defendants Biggs and Pezzola moved this Court to continue the trial of this matter from August 8, 2022, until December 12, 2022, or until the earliest date thereafter. ECF 403 (hereinafter, the “Motion”). For the reasons outlined briefly herein, the government consents to the relief sought in defendants’ Motion, provided that all defendants in this case are tried together.

Biggs’s and Pezzola’s Motion cites the release of transcripts from the House Select Committee as a basis for continuing the trial.<sup>1</sup> They note that “[t]hose transcripts are important . . . to have and review before trial—not during or after.” The government concurs with this assessment. The timing of the anticipated release will prejudice the ability of all parties to prepare for trial because the parties are currently unable to account for the content of those transcripts with respect to their respective cases. The government also submits herewith, for the Court’s consideration, a letter that was sent by the Department of Justice to the House Select Committee yesterday, June 15, 2022. As represented during our last hearing, the Department of Justice has

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<sup>1</sup> While the government agrees that the timing of the hearings may prejudice the defendants, the government does not agree that the substance of the hearings will necessitate a change of venue. Twenty million people across the United States watched the hearings; any potential prejudice is untethered to any specific geographic location with access to television or the internet.

neither access to the transcripts, nor the ability to compel Congress, a co-equal branch of government, to provide copies of the transcripts. While we do not know precisely when copies of the transcripts will be released, if they are released as currently anticipated in early September 2022, the parties to this trial will face unique prejudice because the jury for the August 8 trial will have already been sworn and jeopardy will have already attached.

In consenting to the motion to continue, the government does not consent and will oppose any motion to sever any of the defendants from a trial in this matter. As this Court has held, “[s]everance is a proper remedy only when the defendant has met the ‘heavy burden’ of showing that joinder would violate his constitutional rights. The defendant must show that the threatened prejudice is of a type that requires *severance*, and no less intrusive alternative.” ECF 339, quoting *United States v. Gray*, 173 F. Supp. 2d 1, 7 (D.D.C. 2001). The government’s position is that Biggs and Pezzola are rightly joined with Tarrío, Nordean, and Rehl, and, *inter alia*, judicial economy counsels strongly in favor of trying these defendants together.

WHEREFORE, and for good cause shown and any other reasons that this Court may consider, the government consents to the relief sought in the Motion and asks that this Court continue the trial until on or after December 12, 2022.

Respectfully submitted,

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U.S. Department of Justice

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June 15, 2022

Via Electronic Mail

Timothy J. Heaphy  
Chief Investigative Counsel  
Select Comm. to Investigate the Jan. 6th  
Attack on the United States Capitol  
United States House of Representatives  
Washington, D.C. 20515

Re: Request for Transcripts

Dear Mr. Heaphy:

We write in furtherance of our letter of April 20, 2022. We note that the Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capitol ("Select Committee") in its June 9, 2022 and June 13, 2022, hearings extensively quoted from our filings in active litigation and played portions of interviews the Select Committee conducted of individuals who have been charged by the Department in connection with the January 6<sup>th</sup> Attack on the United States Capitol.

It is now readily apparent that the interviews the Select Committee conducted are not just potentially relevant to our overall criminal investigations, but are likely relevant to specific prosecutions that have already commenced. Given this overlap, it is critical that the Select Committee provide us with copies of the transcripts of all its witness interviews. As you are aware, grand jury investigations are not public and thus the Select Committee does not and will not know the identity of all the witnesses who have information relevant to the Department's ongoing criminal investigations. Moreover, it is critical that the Department be able to evaluate the credibility of witnesses who have provided statements to multiple governmental entities in assessing the strength of any potential criminal prosecutions and to ensure that all relevant evidence is considered during the criminal investigations. We cannot be sure that all relevant evidence has been considered without access to the transcripts that are uniquely within the Select Committee's possession.

The Select Committee's failure to grant the Department access to these transcripts complicates the Department's ability to investigate and prosecute those who engaged in criminal conduct in relation to the January 6 attack on the Capitol. Accordingly, we renew our request that the Select Committee provide us with copies of the transcripts of all the interviews it has conducted to date.

We appreciate your prompt attention to this matter. If you have any questions, please contact us.

Sincerely,

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UNITED STATES ATTORNEY



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