

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

UNITED STATES OF AMERICA :
 : **Case No. 21-cr-129 (ABJ)**
 v. :
 :
GABRIEL AUGUSTIN GARCIA, :
also known as “Gabriel Agustin Garcia,” :
 :
Defendant. :

JOINT MOTION TO CONTINUE TRIAL

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and defendant Gabriel A. Garcia respectfully ask the Court to continue the March 20, 2023 trial. The parties propose the weeks of May 23, 2023, or May 29, 2023. The government believes that trial will require approximately one week.

Government counsel are now in trial likely through March 20, 2023, and have travel conflicts the weeks of March 27, 2023, and April 10, 2023. Defense counsel has mandatory Naval Reserve duty in Key West, Florida, from March 9-13, 2023, conflicting with his attendance at the pretrial conference and interfering with his final days of trial preparation.

The Court’s current scheduling order indicates that motions *in limine* will be due approximately two months before trial, and the joint pretrial statement (including exhibit lists) will be due approximately one month before trial. While the government’s trial conflicts end in March, to ensure adequate time for trial preparation, including compliance with the pretrial schedule, the parties are requesting a trial date in May.

In September, 2022, the Court set this case for trial on March 13, 2023. On December 29, 2022, the government contacted the Court to ask about the Court’s availability March 20 or 27, 2023, in advance of filing any motion to continue. On January 11, 2023, shortly after 5:00 p.m.,

the Court issued a scheduling order setting various pretrial deadlines and resetting the trial for March 20, 2023.

After the government emailed the Court, on the evening of January 4, 2023, government counsel's trial in *United States v. Worrell*, 21-cr-292 (RCL), which had originally been set for December 16, 2022 and then vacated, was reset for February 13, 2023. On the morning of January 11, 2023, the *Worrell* trial was re-set for March 13, 2023. The government anticipates that the trial will last approximately one week. Government counsel is also preparing for a felony trial in *United States v. Speed*, 22-cr-244, set for February 6.¹

In addition, government co-counsel, Jason McCullough, who will file a notice of appearance shortly, is in trial in *United States v. Nordean*, 21-cr-175 (TJK), a five-defendant case involving seditious conspiracy charges, among others. That trial, previously scheduled for December 12, 2022, began December 19, 2022, and opening statements did not take place until January 12, 2023. It may continue into March. Finally, defense counsel only learned of his Naval Reserve duty in the past week.

The parties agree that it would be appropriate to exclude time under the Speedy Trial Act, 18 U.S.C. § 3161(h), to exclude time between March 13, 2023, and a new trial date, based on a finding "that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Factors recognized under 18 U.S.C. § 3161(h)(7)(B)(iv) including continuity of counsel, based on conflicts with the pretrial

¹ When *Speed* was originally set for trial, it was a misdemeanor case. On January 11, a grand jury returned an indictment adding a felony charge. Between October and December, 2022, government counsel was also preparing for felony jury trials in *United States v. Worrell*, 21-cr-292 (RCL) (two defendant, set for December 9, 2022) and *United States v. Southard-Rumsey*, 21-cr-387 (APM) (set for January 19, 2023), among other matters. The *Worrell* trial date was vacated on November 15, 2022, and, on December 9, Southard-Rumsey agreed to proceed by stipulated facts. The *Southard-Rumsey* case is currently set for a stipulated-facts bench trial on January 26, 2023.

conference and trial, and the need for effective preparation of counsel, based on the conflicts outlined above.

For the foregoing reasons, the parties respectfully request that the Court continue the March 20, 2023 trial date to late May. A proposed order follows.

Respectfully submitted,

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[PROPOSED] ORDER CONTINUING TRIAL

Having considered the parties' Joint Motion to Continue Trial, it is hereby

ORDERED that the March 20, 2023 trial in this case is hereby VACATED and reset for May ____, 2023.

IT IS FURTHER ORDERED that following pretrial schedule shall apply:

- (1) Motions in limine on behalf of either party, as well as notice of any evidence the government intends to seek to introduce pursuant to Fed. R. Evid. 404(b) or prior convictions it would seek to use for impeachment under Fed. R. Evid. 609 must be filed by ____, 2023. The oppositions are due on ____, 2023, and replies are due on ____, 2023.
- (2) The parties must jointly file a single Joint Pretrial Statement by ____, 2023.
- (3) Electronic and paper copies of all exhibits must be delivered to chambers and to the Deputy Clerk in the format set out in the Court's January 11, 2023 scheduling order by ____, 2023.
- (4) The previously scheduled pretrial conference is hereby VACATED and rescheduled for ____, 2023 at ____ in Courtroom 3. If this date presents a conflict, the parties may contact the Deputy Clerk to propose a set of mutually convenient alternatives for the Court's consideration in light of its calendar.

Any motion to extend a date for the submission of a pleading to the Court must be filed at least two business days before the date to be extended.

All pleadings must conform to the requirements concerning formatting and fonts set forth in Local Civil Rule 5.1(d).

IT IS FURTHER ORDERED that the due dates set in the Court's January 11, 2023 scheduling order are VACATED. The instructions regarding the contents of the Joint Pretrial Statement and the Format of Exhibits contained in the Court's January 11, 2023 scheduling order shall continue to apply.

IT IS FURTHER ORDERED that the time between March 13, 2023 and May ____, 2023 shall be excluded from computation under the Speedy Trial Act because the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The Court makes this finding on the basis of the the parties' schedules as outlined in the Joint Motion to Continue, and the need for effective preparation and continuity of counsel in this felony jury-trial case.

SO ORDERED.

Dated: January , 2023

THE HON. AMY BERMAN JACKSON
UNITED STATES DISTRICT JUDGE