

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 : Cr. No. 21-738 (BAH)

MICHAEL OLIVERAS, : MOTION FOR STATUS CONFERENCE
 : BASED ON DEFENDANT'S FAILURE
 : TO COMMUNICATE WITH COUNSEL
 :
 Defendant. :

PLEASE TAKE NOTICE that the defendant, Michael Oliveras, through appointed counsel, Lori M. Koch, Assistant Federal Public Defender, shall move before the Honorable Beryl A. Howell, Chief United States District Judge for the District of Columbia, at the United States Courthouse, District of Columbia, on a date to be set by the Court, for a Status Conference to determine whether defendant wishes to have appointed counsel continue representation on these charges and, if so, how he wishes to proceed, for the reasons that follow:

1. On December 16, 2021, I was appointed to represent defendant Michael Oliveras in this matter. An initial appearance was held on the criminal complaint on December 16, 2021, before the Honorable Zia M. Faruqui, United States Magistrate Judge. A Status Conference was scheduled for January 7, 2022.

2. On January 7, 2022 a Status Hearing was held before Chief Judge Howell via videoconference (Defendant resides in New Jersey). On March 11, 2022 another Status Hearing was held, and a further Status Hearing was set for May 27, 2022. On May 23, 2022, a Joint Status Report providing requested trial dates and motions deadlines was filed, as well as a Joint Motion to continue the May 27, 2022 status conference until July 22, 2022, to provide time for the parties to continue to exchange and review discovery and attempt to negotiate a plea agreement of this matter.

3. On May 23, 2022, this Court entered a Minute Order adopting the parties' Joint Proposed Motions Deadline and Trial Date Schedule. Per that schedule, **Pretrial motions are due 10/26/2022**; opposition due by 11/7/2022; replies due 11/14/2022; Joint Pretrial Statement due by 12/2/2022; Pretrial Conference scheduled for 1/20/2023 (in-person); jury selection/jury trial scheduled for 9:00 am on 2/20/23 or 2/27/2023 (exact date to be determined at pretrial conference).

4. From that time on, undersigned counsel has received voluminous discovery, including numerous digital files containing audio and videotapes of CCTV, body worn camera ("BWC") and cellphone video files from numerous sources, and a Cellebrite report of the search of defendant's cellphone (and copy of the data retrieved from the cellphone), among other discovery. Some of these items were forwarded to defendant via email when possible; Defendant came in person to undersigned counsel's office on Monday, October 17, 2022 to view them.

5. In addition to discovery, two proposed plea agreements have been extended to defendant. The most recent one was set to expire Thursday, October 20, 2022. After reviewing some of the discovery provided, as well as the proposed plea agreement on October 17, 2022, defendant left undersigned counsel's office and appeared unhappy with counsel's advice and information. He took with him a copy of the proposed plea agreement, but did not advise whether he wanted to enter into the agreement.

6. Since that date, undersigned counsel has made numerous attempts to contact the defendant, via cellphone, email and letter. To date, the defendant has not returned any phone calls nor responded to text messages or emails. A copy of the proposed plea offer, with an extended date through Monday, October 24, 2022, was mailed via regular mail to the defendant on Friday, October 21, 2022.

7. The plea offer is set to expire today, Monday, October 24, 2022. Pretrial Motions are due

in two days, on Wednesday, October 26, 2022. Undersigned counsel is unable to prepare meaningful Pretrial Motions without the assistance and input of the defendant. Moreover, counsel for the Government has proposed a number of stipulations for trial which undersigned counsel needs to review with the defendant, but he will not communicate with counsel. Undersigned counsel can not prepare for trial without the defendant's assistance and communication.

8. For these reasons, it is respectfully requested this Court hold a status conference, via videoconference call, with the parties including the defendant present, to ascertain whether defendant will cooperate with appointed counsel or plans to retain private counsel (or proceed pro se), and to set a date with sufficient advance notice that undersigned counsel can notify defendant in mail of the date of the videoconference (or have Pretrial Services notify him).

9. It is further respectfully requested that any time delay from the filing of the instant motion through the time a hearing is held with the defendant present, be excluded pursuant to 18 U.S.C. § 3161(h)(1)(D), which excludes from computation of "speedy trial" time, any "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion[.]"

Respectfully submitted,

/s/ Lori M. Koch

Lori M. Koch, Esq.

Assistant Federal Public Defender

DATED: October 24, 2022

TO: Anthony L. Franks
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