

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

V.

CAUSE NO. 1:21-cr-00599-RBW

THOMAS HARLEN SMITH

MOTION TO CONTINUE

Defendant Thomas Smith, by and through counsel, moves the Court pursuant to Rule 45 of the Federal Rules of Criminal Procedure for an Order continuing the trial, and related pretrial deadlines, currently scheduled in the above-styled cause, and in support thereof would respectfully show as follows:

1. The trial in this cause is currently scheduled for April 17, 2023, in Washington, D.C. This motion is based upon recently released, relevant evidence that has been made available publicly since the trial date was scheduled.

2. The relevant video footage has not been viewed by counsel for either party. It is assumed that a portion of this evidence may have been disclosed, though it is believed that the videos exceed the abundant hours of footage previously disclosed by the prosecution. Allegedly, it contains far more footage from various sources other than CCTV and body cam footage.

3. Neither of the parties in this matter knows the full content of the material, but Mr. Smith respectfully submits that relevant evidence applicable to the charges he faces, including evidence he could potentially raise in his defense, is included in the massive amount of disclosures. One certainty is that this information is direct evidence of what occurred on January 6, not a mere "possibility" or fishing expedition. The likelihood of the production not containing relevant information is very slight, since the footage pertains to events on Capitol grounds and inside the Capitol on the date in question. It is more than mere speculation that the footage is relevant and

important.

4. Undersigned counsel has an ethical duty of due diligence in locating and reviewing such information. A failure to do so could potentially result in a Bar complaint or action under 28 U.S.C. § 2255, especially if exculpatory information is located after the trial.

5. There is no question that an abundance of discovery has already been produced and received. However, the question is not what has already been provided, but what other direct evidence has just now been released. It is also known that there are gaps in the footage previously provided, where Mr. Smith is not seen. There is a duty to investigate whether the newly released material would provide evidence necessary for his defense.

6. Mr. Smith respectfully requests that the April, 17, 2023, trial date be continued for 60 days or any other time frame the court believes appropriate, in order to allow the opportunity to obtain the newly released footage, investigate the same, and prepare for trial. Mr. Smith respectfully submits that the failure of undersigned counsel to move for a continuance and request the new evidence could result in a miscarriage of justice, especially as this case is unusual and complex due to the volume of information involved. A reasonable time is necessary for effective representation. *See* 18 U.S.C. § 3161(h)(7)(B)(i), (ii), and (iv).

7. According to reports, House Republicans will provide individuals facing charges in connection to the Jan. 6, 2021, activities at the U. S. Capitol with access to tens of thousands of hours of video footage. One such report notes, in part, as follows:

Rep. Barry Loudermilk (R-Ga.), chair of the House Administration Subcommittee on Oversight who has been tasked with overseeing public requests and release of Jan. 6 videos and files, said on Tuesday that he will consider requests for access from Jan. 6 defendants.

“What I’ve heard is they haven’t had access to some [footage],” Loudermilk told The Hill. “So again, it’s a process of giving them access to terminals to review footage, and then if they actually want to put it to use in trial, go through the process to make sure there’s nothing sensitive.”

“We’re hurriedly but strategically putting together protocols. So hopefully we’ll have things next week to where people can request [access],” Loudermilk said.¹

8. Defense counsel requests a continuance in order to meet with Defendant, complete the inspection of discovery material, prepare any necessary pretrial motions, and adequately prepare for trial. Mr. Smith waives his Speedy Trial Act rights relating to this motion.

9. Counsel for the government has been contacted regarding this motion and stated it will be contested.

10. Counsel for co-defendant Donnie Wren has been contacted and stated that Mr. Wren concurs with the request and will join in the motion.

11. This motion is filed, not for the purpose of delay, but so that justice may be done.

REQUESTED RELIEF

Based on the grounds set forth above, Defendant Thomas Smith respectfully requests an Order continuing the trial scheduled in this cause and extending the related pretrial motion and plea deadlines for a period of 60 days from April 17, 2023, or any other time frame deemed appropriate by the court.

Respectfully submitted,

THOMAS SMITH

/s/ Gregory S. Park

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<https://thehill.com/homenews/house/3878305-house-republicans-plan-to-give-jan-6-defendants-access-to-security-footage/>

CERTIFICATE OF SERVICE

I, Gregory S. Park, attorney for Defendant Thomas Smith, do hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which provided notification to all parties of record.

Dated this the 24th day of March, 2023.

/s/ Gregory S. Park
GREGORY S. PARK
Assistant Federal Public Defender