

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

**UNITED STATES OF AMERICA,**

V.

Criminal No. 21-cr-00198 (TSC)

**TROY ANTHONY SMOCKS,**

Defendant.

## ORDER

Defendant Troy Anthony Smocks was indicted on two counts of threats in interstate commerce in violation of 18 U.S.C. § 875(c). ECF No. 8. On April 4, 2021, Smocks moved to dismiss, ECF No. 19, and on May 7, 2021, this court signed an order denying Smocks' motion, ECF No. 32. On June 12, 2021, the Government moved to exclude time under the Speedy Trial Act (the "Act"), 18 U.S.C. §§ 3161 *et seq.*, ECF No. 38, and on July 1, 2021, Smocks submitted a memorandum in opposition to such an exclusion, ECF No. 39.

“The timeline for a criminal prosecution is controlled by both the strict tabulation of days under the Speedy Trial Act and the broad, flexible standards under the Sixth Amendment Speedy Trial Clause.” *United States v. Homaune*, 898 F. Supp. 2d 153, 165 (D.D.C. 2012). The Act provides that the trial of a defendant who enters a plea of not guilty shall commence within 70 days of indictment or initial appearance, whichever occurs later, and entitles the defendant to dismissal of the charges in the event such deadline is not met. *See* 18 U.S.C. §§ 3161(c)(1), 3162(a)(2). A court may exclude time under the Act, however, if a continuance is granted on a judge’s own motion “or at the request of the defendant or his counsel or at the request of the

attorney for the Government,” so long as the continuance is granted on the basis of the judge’s “finding that the ends of justice served by [a continuance] outweigh the best interests of the public and the defendant in a speedy trial.” *Id.* § 3161(h)(7)(A). Those findings must be set forth “in the record of the case, either orally or in writing.” *Id.*

In determining whether the interests of justice would be served by such continuance, the court must consider a series of non-exclusive factors, including: “[w]hether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice”; and “[w]hether the failure to grant such a continuance . . . would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.” *Id.* § 3161(h)(7)(B).

In light of the ongoing COVID-19 pandemic, and in the interest of public health and safety, Chief Judge Beryl A. Howell has issued a series of standing orders governing the operations of the United States District Court for the District of Columbia. The first such order, released on March 16, 2020, postponed all criminal and civil jury selections and trials scheduled to commence before May 11, 2020. Standing Order 20-9, at 2 (D.D.C. Mar. 16, 2020). This standing order also stated that the time period from March 17 through May 11, 2020, was to be excluded under the Act for all criminal trials and noted that judges presiding over individual criminal cases “may make additional findings and exclude additional time, as necessary and appropriate.” *Id.* at 2–3. This guidance was extended through a series of further standing orders throughout the remainder of 2020 and early 2021. *See* Standing Order 20-19 (D.D.C. Apr. 2, 2020); Standing Order 20-29 (D.D.C. May 26, 2020); Standing Order 20-62 (D.D.C. July 9, 2020); Standing Order 20-68 (D.D.C. Aug. 10, 2020); Standing Order 20-89 (D.D.C. Nov. 6,

2020); Standing Order 20-93 (D.D.C. Dec. 17, 2020). Although the guidance set forth in the renewed standing orders has evolved in recent months, public health and safety have remained a central concern. *See, e.g.*, Standing Order 21-10, at 4–5 (D.D.C. Mar. 5, 2021) (permitting limited resumption of urgent criminal jury trials and stating the time period from March 17, 2020 through August 31, 2021 is to be excluded under the Act because “the ends of justice served by the continuances to protect public health and safety and the fair trial rights of a defendant outweigh the best interest of the public and any defendant’s right to a speedy trial”) (citing 18 U.S.C. § 3161(h)(7)(A)); Standing Order 21-20 (D.D.C. Apr. 2, 2021) (modifying restrictions on access to the Courthouse); Standing Order 21-33 (D.D.C. June 11, 2021) (emphasizing that for public health and safety reasons, most proceedings will be conducted remotely, with in-person proceedings subject to significant precautions). The court continues to work to address the substantial backlog of both criminal and civil trials resulting from the past year’s restrictions on access to the Courthouse.

Although the court is sympathetic to Smocks’ opposition to an exclusion of time in light of the slow rate of discovery in this case, it finds that, given the ongoing discovery process<sup>1</sup> and the current circumstances created by the COVID-19 pandemic, the ends of justice served by the exclusion of the time between May 7, 2021, when this court signed the order denying Smocks’ motion to dismiss, and August 2, 2021, when the next status conference in this case will be held, outweigh the best interests of the public and the Defendant in a speedy trial.<sup>2</sup>

---

<sup>1</sup> Although Smocks challenges the necessity of much of the outstanding discovery, the court is cognizant of the complex and extensive nature of the digital discovery associated with the Capitol riot cases and is wary of endorsing such a limitation on discovery at this point in time.

<sup>2</sup> Delays caused by pretrial motions are automatically excluded under the Act. 18 U.S.C. § 3161(h)(1)(D). The Government’s Motion for Hearing, ECF No. 37, and Motion for Exclusion of Time under the Act, ECF No. 38, were filed May 7, 2021. In light of the foregoing

It is therefore ORDERED that the time period from May 7, 2021 through August 2, 2021 will be excluded from the calculation of time in this case under the Speedy Trial Act, 18 U.S.C. §§ 3161 *et seq.* The court cautions the parties that further requests to exclude time under the Act, absent compelling new justification, will not be looked on favorably by the court.

Date: July 14, 2021

*Tanya S. Chutkan*  
TANYA S. CHUTKAN  
United States District Judge

---

discussion, the court does not find it necessary to address whether these motions are sufficient to prompt automatic exclusion of time.