UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**No. 21-cr-84 (PLF)**
	:	
DANIEL PAGE ADAMS &	:	
CODE PAGE CARTER CONNELL,	:	
	:	
Defendant.	:	

GOVERNMENT'S OPPOSITION TO DEFENDANTS' JOINT MOTION TO CONTINUE SENTENCING

The United States of America respectfully opposes the defendants' Joint Motion to Stay Sentencing Hearing (ECF 126), which is, in effect, a motion to continue his sentencing until mid-2024. On December 13, 2023, the United States Supreme Court granted certiorari in *United States v. Fischer*, 64 F.4th 329 (D.C. Cir. 2023), *cert. granted* 23-5572. The issue to be considered is the appropriate interpretation of the statute criminalizing obstruction of an official proceeding, 18 U.S.C. § 1512(c)(2), which is one of the crimes for which the defendants were convicted at trial. This development does not merit a continuance of the scheduled sentencing hearing.

When evaluating whether to issue a stay, "a court considers four factors: '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" *Nken v. Holder*, 556 U.S. 418, 426 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The third and fourth factors "merge" when a party moves for a stay against the government. *Id.* at 435. A stay "'is not a matter of right, even if irreparable injury might otherwise result.'" *Id.* at 433 (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). The party seeking the stay bears the burden of "mak[ing] out a clear case of hardship or inequity in

being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else." *Landis*, 299 U.S. at 255.

With regard to continuances, "[i]t is firmly established that the granting or refusal of a continuance is a matter within the discretion of the judge who hears the application, and is not subject to review absent a clear abuse." *United States v. Burton*, 584 F.2d 485, 489 (D.C. Cir. 1978). A court's review of a motion to continue "necessarily depends on all the surrounding facts and circumstances," including: (1) the length of the requested delay; (2) whether other continuances have been requested and granted; (3) the balanced convenience or inconvenience to the litigants, witnesses, counsel, and the court; (4) whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; (5) whether the defendant contributed to the circumstance which gives rise to the request for a continuance; (6) whether denying the continuance will result in identifiable prejudice to defendant's case, and if so, whether this prejudice is of a material or substantial nature; (7) and other relevant factors which may appear in the context of any particular case. *Id.* at 491. Other courts in this district have declined to continue sentencing connected to January 6, 2021, riot at the United States Capitol based on the Supreme Court's decision to hear *Fischer*. *See United States v. Thomas Caldwell*, 21-cr-28 (APM) (Status Hearing, 12/20/2023) (declining to continue sentencing based on *Fischer*); *see also United States v. Sara Carpenter*, 21-cr-305 (JEB) (Minute Order, 12/15/2023) (same).

Whether viewed as a motion to stay or a motion for a lengthy continuance, the defendants' joint motion should be denied because the relevant factors weigh against his request. First, the fact that the Supreme Court granted certiorari in *Fischer* does not establish that the defendants are likely to succeed on the merits of any challenge to his Section 1512(c)(2) conviction. At this time, a panel of the D.C. Circuit and every district court judge but one has agreed with the government's

interpretation of that statute. *See Fischer*, 64 F.4th at 338 ("Although the opinions of those district judges are not binding on us, the near unanimity of the rulings is striking, as well as the thorough and persuasive reasoning in the decisions. […] The district judge in the instant case stands alone in ruling that § 1512(c)(2) cannot reach the conduct of January 6 defendants."). The mere fact that the Supreme Court agreed to hear *Fischer* does not indicate that those opinions were wrongly decided. *See, e.g.*, *Heath v. Jones*, 941 F.2d 1126, 1131 (11th Cir. 1991) ("[T]he grant of certiorari does not necessarily indicate that the position advocated by Heath has any merit, only that it is an important question.").

Additionally, it is unlikely that any decision in *Fischer* would be issued by the Supreme Court before the end of its term in June of 2024. That would be nearly three-and-a-half years after the offenses of which the defendants were convicted, and nearly a year after they were found guilty following a stipulated bench trial. Delaying the sentencing for another six months or more would undermine the interests of the public in the final adjudication of a case of great significance.

A further lengthy delay of sentencing for the defendants would also give them an unfair advantage not granted to the approximately one hundred and fifty people who have been convicted of violation Section 1512 in connection with the events of January 6, many of whom have been sentenced and are now serving terms of incarceration as a result of their convictions. The defendants should not, based on the timing of their sentence relative to the Supreme Court's grant of certiorari, receive any benefit not afforded to the many other people who have been tried, convicted, and—in many cases—incarcerated for violations of this statute.

The defendants will not suffer any irreparable injury by proceeding with sentencing as scheduled. Even if the Supreme Court were to decide *Fischer* adversely to the government, it is not clear that the Court's interpretation of Section 1512(c)(2) would necessarily invalidate the

defendants' conviction in this case. Moreover, obstruction of Congress was not the defendants' only conviction. They will also be sentenced for convictions under 18 U.S.C. § 231(a)(3), 18 U.S.C. § 111(a), 18 U.S.C. § 1752(a), and 40 U.S.C. § 5104(e)(2). Therefore, in imposing its sentence in this case, the Court should make clear what sentence it would impose notwithstanding the defendants' conviction of Section 1512(c)(2) and what, if any, particular weight the Court gives the defendants' convictions under Section 1512(c)(2) in determining its sentence. Regardless of the implications of *Fischer*, the public and the government have a right to finality on the defendant's other convictions.

Finally, any potential irreparable injury to the defendants can be addressed via a motion for release pending appeal under 18 U.S.C. § 3143(b). Under that statute, a defendant who has been sentenced to a term of imprisonment "shall . . . be detained" unless the court finds that two separate requirements are met:

> (1) "clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released," and
>
> (2) that the appeal "raises a substantial question of fact or law likely to result in—(i) reversal, (ii) an order for a new trial, (iii) a sentence that does not include a term of imprisonment, or (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process."

18 U.S.C. § 3143(b)(1)(A)-(B). A "substantial question" is one that is "a close question or one that very well could be decided the other way." *United States v. Peholtz*, 836 F.2d 554, 555 (D.C. Cir. 1987). Although the government would likely oppose such a motion, the possibility for release pending appeal is another factor favoring denial of the defendant's motion. The Bail Reform Act—not a stay of the proceedings—is the proper mechanism under which to address any potential prejudice to the defendants.

For all these reasons, the defendants' motion to stay/continue sentencing for six months or more should be denied, and the Court should proceed with sentencing the defendants on January 9, 2024.

Respectfully submitted,
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