

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

**UNITED STATES OF AMERICA** :  
 :  
 **v.** : **Criminal No. 21-CR-00338-TFH**  
 :  
 **DOVID SCHWARTZBERG,** :  
 :  
 **Defendant.** :

**UNITED STATES' UNOPPOSED MOTION TO CONTINUE AND  
TO EXCLUDE TIME UNDER THE SPEEDY TRIAL  
ACT AND MOTION TO CONTINUE STATUS HEARING**

The United States of America hereby moves this Court for a 60-day continuance of the status conference set for August 18, 2021, and to exclude the time within which the trial must commence under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, on the basis that the ends of justice served by taking such actions outweigh the best interest of the public and the defendant in a speedy trial pursuant to the factors described in 18 U.S.C. §§ 3161(h)(7)(A), (B)(i), (ii), and (iv) from the date this Court enters an Order on this motion through and including the date of the next hearing. In support of its motion, the Government states as follows:

**FACTUAL BACKGROUND**

Defendant is charged by information with violations of 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D) and (G). The Government seeks a continuance for the following two reasons which demonstrate that a continuance serves the ends of justice: (1) the parties continue to engage in ongoing plea negotiations and need more time to work through the discussion; and (2) the United States continues to provide individualized discovery to Defendant as well as discovery generated from other sources.

Since our last status conference, the United States has continued to work with counsel for

Defendant and started plea negotiations. Those negotiations are ongoing, however, the parties believe that progress is being made and anticipate moving those discussions forward in the next 60-days.

As this Court well knows, the investigation and prosecution of the attack on the U.S. Capitol (hereinafter the Capitol Attack), will likely be one of the largest in American history, both in terms of the number of defendants prosecuted and the nature and volume of the evidence. This investigation continues and the Government expects that additional individuals will be charged. As the Capitol Attack investigation is still on-going, the number of charged defendants and the volume of potentially discoverable materials will only continue to grow. Nevertheless, the United States is aware of and takes seriously its obligations pursuant to Federal Rule of Criminal Procedure 16 and Local Criminal Rule 5.1(a), the provisions of *Brady v. Maryland*, 373 U.S. 83, 87 (1963), *Giglio v. United States*, 405 U.S. 150, 153-54 (1972), and the Jencks Act, 18 U.S.C. § 3500. The Government has already provided defense counsel with a large amount of individualized discovery. This discovery is the most relevant discovery related to Defendant's conduct inside the U.S. Capitol. However, the United States anticipates disclosing additional discovery from Defendant's cellular telephone as well as from other sources which has not yet been identified and/or fully examined. To allow the parties sufficient time to review this discovery and to effectively prepare their cases, the United States seeks a continuance.

### **ARGUMENT**

Section 3161(h) of the Speedy Trial Act sets forth certain periods of delay which the Court must exclude from the computation of time within which a trial must commence. As is relevant to this motion for a continuance, pursuant to subsection (h)(7)(A), the Court must exclude:

Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings 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). This provision further requires the Court to set forth its reasons for finding that that any ends-of-justice continuance is warranted. *Id.* Subsection (h)(7)(B) sets forth a non-exhaustive list factors that the Court must consider in determining whether to grant an ends-of-justice continuance, including:

- (i) Whether 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.
- (ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.  
...
- (iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or 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.

18 U.S.C. § 3161(h)(7)(B)(i)(ii) and (iv). Importantly, “[i]n setting forth the statutory factors that justify a continuance under subsection (h)(7), Congress twice recognized the importance of adequate pretrial preparation time.” *Bloate v. United States*, 559 U.S. 196, 197 (2010) (citing §3161(h)(7)(B)(ii), (B)(iv)). Finally, an interests of justice finding is within the discretion of the Court. *See, e.g., United States v. Rojas-Contreras*, 474 U.S. 231, 236 (1985); *United States v. Hernandez*, 862 F.2d 17, 24 n.3 (2d Cir. 1988).

In this case, an ends-of-justice continuance is warranted under 18 U.S.C. § 3161(h)(7)(A) based on the factors described in 18 U.S.C. § 3161(h)(7)(B)(i)(ii) and (iv). As described above, the Capitol Attack is likely the most complex investigation ever prosecuted by the Department of Justice. Moreover, the investigation is reactive and ongoing. The need for reasonable time to organize, produce, and review voluminous discovery is among multiple pretrial preparation grounds that Courts of Appeals have routinely held sufficient to grant continuances and exclude the time under the Speedy Trial Act. *See, e.g., United States v. Bikundi*, 926 F.3d 761, 777-78 (D.C. Cir. 2019) (upholding ends-of-justice continuances totaling 18 months in two co-defendant health care fraud and money laundering conspiracy case, in part because the District Court found a need to “permit defense counsel and the government time to both produce discovery and review discovery”). Thus, due to the number of individuals currently charged across the Capitol Attack investigation and the nature of those charges, the on-going investigation of many other individuals, the volume and nature of potentially discoverable materials, and the reasonable time necessary for effective preparation by all parties taking into account the exercise of due diligence, the failure to grant such a continuance would be likely to make a continuation of this proceeding impossible, or result in a miscarriage of justice. Accordingly, the ends of justice served by granting a request for a continuance outweigh the best interest of the public and Defendant in a speedy trial.

Government counsel notified defense counsel of the filing of this motion, and he does not oppose this motion. Counsel indicated that a 60-day extension would assist him in working with his client through the plea discussions. He further indicated that Defendant consents to the exclusion of time under the Speedy Trial Act.

WHEREFORE, the Government respectfully requests that this Court grant the motion to

continue the Status Hearing set for August 18, 2021, for an additional 60 days from the date this Court enters an Order on this motion through and including the date of the next hearing, and that the Court exclude the time within which the trial must commence under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, on the basis that the ends of justice served by taking such actions outweigh the best interest of the public and Defendant in a speedy trial pursuant to the factors described in 18 U.S.C. § 3161(h)(7)(A), (B)(i), (ii), and (iv).

Date: August 16, 2021

Respectfully submitted,

CHANNING D. PHILLIPS  
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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>UNITED STATES OF AMERICA</b>	:	
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<b>v.</b>	:	<b>Criminal No. 21-CR-00338-TFH</b>
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<b>DOVID SCHWARTZBERG,</b>	:	
	:	
<b>Defendant.</b>	:	

**ORDER**

Based upon the representations in the United States’ Unopposed Motion to Continue and to Exclude Time Under the Speedy Trial Act and Motion to Continue Status Hearing, and upon consideration of the entire record, the Court makes the following findings:

Defendant is charged by information with violations of 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D) and (G). The Government seeks a continuance based on the following: (1) the parties continue to engage in ongoing plea negotiations and need more time to complete those discussions; and (2) the United States continues to provide individualized discovery to Defendant as well as discovery generated from other sources. Defense counsel consent to the motion.

In this case, an ends-of-justice continuance is warranted under 18 U.S.C. § 3161(h)(7)(A) based on the factors described in 18 U.S.C. § 3161(h)(7)(B)(i), (ii), and (iv). Due to the parties’ ongoing plea negotiations, the Government’s continuous efforts to discover and provide discovery, and the reasonable time necessary for effective preparation by all parties taking into account the exercise of due diligence, the failure to grant such a continuance in this proceeding would be likely to make a continuation of this proceeding impossible, or result in a miscarriage of justice. Accordingly, the ends of justice served by granting a request for a continuance outweigh the best

interest of the public and the defendant in a speedy trial.

Therefore, it is this \_\_\_\_ day of \_\_\_\_\_, 2021,

**ORDERED** that the United States' Unopposed Motion to Continue and to Exclude Time Under the Speedy Trial Act and Motion to Continue Status Hearing, is hereby GRANTED; it is further

**ORDERED** that that the Status Hearing set for August 18, 2021, is continued to \_\_\_\_\_, 2021, at \_\_\_\_\_; and it is further

**ORDERED** that the time period from the date of this Order through and including the date of the next hearing is hereby excluded from the computation of time within which trial must commence under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*

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THE HONORABLE THOMAS F. HOGAN  
UNITED STATES SENIOR DISTRICT JUDGE