

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 v. : **Crim. No. 21-CR-254 (RCL)**
 :
 FRANK J. SCAVO, :
 : *Defendant.* :

UNOPPOSED MOTION TO CONTINUE STATUS CONFERENCE

The United States of America, by and through the United States Attorney for the District of Columbia, respectfully moves this Court to continue the status conference set for June 23, 2021, at 11:00 a.m., in this matter. The government further moves the Court to exclude the period of the continuance from the computation of time under the Speedy Trial Act. Counsel for the defendant, Frank J. Scavo, does not oppose this motion. In support of this unopposed motion, the government now states the following:

1. On June 16 and 18, 2021, the undersigned counsel for the government and counsel for Scavo discussed issues related to discovery and the possibility of a pretrial disposition in this matter.

2. Regarding discovery, the government has provided a considerable amount of preliminary discovery in this case and the most significant evidence of which the undersigned counsel is currently aware, including evidence of surveillance video from inside the Capitol. (The discovery provided so far is detailed in the preliminary-discovery letter attached in ECF No. 22.) The undersigned counsel informed counsel for Scavo that it expects the first volume of formal discovery, including additional documents from the Federal Bureau of Investigation's ("FBI") case file, would be provided in the coming weeks. Per counsel for Scavo's request, the undersigned

counsel also agreed to look into the possible existence of other particular video evidence from inside the Capitol.

3. Regarding the possibility of a pretrial disposition, the undersigned counsel explained that the government is still considering issues related to tendering a plea offer in this matter that will take additional time to resolve. It is not expected these issues will be resolved before the currently scheduled status conference on June 23, 2021. A continuance of approximately 45 days would provide additional time for the government to sort out these issues and continue conferring with counsel for Scavo.

4. Should the Court be inclined to continue the status conference, the undersigned counsel and counsel for Scavo would be available at any time on any date from August 5-13, 2021.

5. The government also moves the Court to exclude the period from June 23, 2021, until the continuance date from the computation of time under the Speedy Trial Act, 18 U.S.C. § 3161 (“STA”), for the reasons the government articulated in its prior motion to continue and exclude time under the STA (ECF No. 16) and because the continuance will further talks aimed at a pretrial disposition. The government also requests the Court find that the ends of justice served by granting this continuance outweigh the best interests of the public and Scavo in a speedy trial. Counsel for Scavo does not oppose excluding time under the STA.

WHEREFORE, for the foregoing reasons, the government respectfully requests that the Court GRANT this unopposed motion to continue the status conference, and requests that the Court exclude the period from June 23, 2021, until the next Court date from the computation of time under the STA.

Respectfully submitted,

CHANNING D. PHILLIPS
Acting United States Attorney
D.C. Bar No. 415793

BY: /s/ Seth Adam Meinero
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 21, 2021, I served a copy of this pleading on defendant's counsel through the Court's electronic case files system.

/s/ Seth Adam Meinero

SETH ADAM MEINERO

Trial Attorney

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ORDER

Based upon the representations in the United States’ Unopposed Motion to Continue, and upon consideration of the entire record, the Court makes the following findings:

Defendant is charged in a four-count information with violations of 18 U.S.C. § 1752(a)(1) and (a)(2) and 40 U.S.C. § 5104(e)(2)(C) and (D) that occurred at the United States Capitol on January 6, 2021. As articulated in the Government’s prior Motion to Continue (ECF No. 16), the investigation and prosecution of the attack on the Capitol (hereinafter the Capitol Attack) on January 6, 2021, 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 ongoing, the number of defendants charged and the volume of potentially discoverable materials will only continue to grow. In short, even in cases involving a single defendant, the volume of discoverable materials is likely to be significant.

Moreover, the Government continues to develop a system for storing and searching, producing and/or making available voluminous materials accumulated, and ensuring that such system will be workable for both the Government and defense.

The Government and counsel for the Defendant have conferred on discovery issues and a

potential disposition in this matter, and are still in discussions about forthcoming discovery and a potential pretrial resolution. As noted in ECF No. 22, the Government has already provided some discovery to the Defendant.

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).

In sum, due to the number of individuals currently charged across the Capitol Attack investigation and the nature of those charges, the ongoing investigation of many other individuals, the volume and nature of potential discovery 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 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.

In addition, a continuance is warranted because a continuance will provide additional time for the parties to continue talks aimed at a pretrial disposition.

Moreover, as set forth in this Court's Standing Order No. 21-10, the ongoing Coronavirus Disease 2019 (COVID-19) pandemic has also led to a variety of delays in the resumption of criminal trials in this District. *See In Re: Limited Resumption of Criminal Jury Trials in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 21-10 (BAH) (Mar. 5, 2021). Based on the findings in that Standing Order, which are incorporated herein, at least until August 31, 2021, no more than three trials can proceed in this District at any given time. The trials that will be prioritized are those in which defendants have been detained, that had standing trial dates before the pandemic, or that involve few witnesses who need to travel from

out-of-town. It is not possible, considering the health and safety measures outlined in Standing Order No. 21-10, for this case, involving an out-of-custody Defendant to proceed to trial in the next 60 days.

Therefore, it is this ____ day of June, 2021,

ORDERED that the United States' Unopposed Motion to Continue is hereby GRANTED; it is further

ORDERED that this proceeding 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.*

THE HONORABLE ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE