

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

UNITED STATES OF AMERICA

v.

BRUNO JOSEPH CUA

Criminal Action No. 21-00107 (RDM)

**MOTION FOR LEAVE TO FILE MOTION TO DISMISS COUNT THREE
AND FOR EXPEDITED BRIEFING SCHEDULE**

Bruno Joseph Cua, through undersigned counsel, hereby moves this Honorable Court for an Order (1) granting leave to file the attached Motion to Dismiss Count Three of the Second Superseding Indictment or, in the Alternative, for a Pretrial Determination Regarding 18 U.S.C. § 111(a) and (2) setting an expedited briefing schedule for the motion. The date for filing pretrial motions was December 5, 2022. Although counsel for Mr. Cua filed several pretrial motions and an expert disclosure on December 5, ECF Nos. 229, 230, 231 & 232, they did not recognize the defect in Count Three of the Second Superseding Indictment (“SSI”), charging Mr. Cua with violating section 111(a), until recently during preparations for trial.

A copy of the proposed motion is attached.

Counsel for the government has stated that the government objects to the filing of the motion but has agreed to an expedited briefing schedule if leave is granted under which the government would file its opposition brief on or before January 23, 2023, and Mr. Cua would file any reply brief on or before January 26, 2023.

In support of this motion, Mr. Cua states as follows:

1. A bench trial in this case is currently set to begin on February 13, 2023.

2. On August 22, 2022, the Court entered a Minute Order setting the pretrial schedule in this case. Among other deadlines, the Order set a deadline of November 21, 2022, for the parties to submit pretrial motions, other than motions in limine, and to make any required expert disclosures pursuant to Federal Rule of Criminal Procedure 16. The schedule also set deadlines of December 7, 2022, for oppositions to the submissions and December 14, 2022, for any replies.

3. On November 11, 2022, the Court entered a Minute Order granting the defense's consent motion to extend the deadlines for pretrial motions and Rule 16 expert disclosures to December 5, 2022, oppositions to those motions and disclosures to December 19, 2022, and any replies for those motions and disclosures to December 30, 2022. Counsel had requested the extensions due to a death of a close family member of primary counsel responsible for those submissions, including to attend to the business affairs and the estate of the family member, which required immediate, extended attention. *See* ECF No. 216.

4. Mr. Cua filed three pretrial motions and a Rule 16 expert disclosure on December 5, 2022. *See* ECF Nos. 229, 230, 231 & 232. The government filed its oppositions to Mr. Cua's pretrial motions and a motion to exclude Mr. Cua's expert on December 19, 2022. *See* ECF Nos. 235, 236, 237 & 238.

5. On December 27, 2022, Mr. Cua's counsel requested an extension of two business days, until January 4, 2023, to file reply briefs in support of Mr. Cua's pretrial motions and in support of his expert disclosure because counsel had been required to be out of the office and out of town during the week those papers were due to attend further to the business affairs and estate of his deceased family member. The Court granted the requested extension the same

day by Minute Order. Mr. Cua filed his reply briefs in support of his pretrial motions and expert disclosure on January 4, 2023. *See* ECF Nos. 246, 247, 248 & 249.

6. Recently, through research related to preparations for trial, Mr. Cua's counsel recognized that Count Three of the Second Superseding Indictment is defective. Specifically, under the text of section 111(a), its structure, its legislative history, and persuasive case law, the Indictment fails to allege that Mr. Cua must have committed an assault to be convicted of section 111(a). Count Three also fails to include an important phrase from the statute; namely, the allegation that Mr. Cua committed a felony offense under section 111(a) by engaging in a prohibited act "involve[ing] physical contact with the victim" does not include the phrase "of that assault" after the word "victim." The failure to recite this language from the statute is critical, especially given the requirement that an offense under section 111 involve assaultive conduct, as set forth in the accompanying motion.

7. Counsel has worked diligently since discovering the defect in Count Three to prepare the motion and is filing this motion for leave as soon as was feasible.

8. In order to provide time for the Court to consider the motion prior to trial, Mr. Cua respectfully requests that the Court enter an order setting an expedited briefing schedule under which the government's opposition brief would be due no later than January 26, 2023, and defendant's reply brief would be due no later than January 26, 2023. The government agrees with this briefing schedule.

9. Acceptance of the proposed motion for filing will not unduly delay preparation of this case for trial. A bench trial is scheduled to begin on February 13, 2022, eighteen days after completion of briefing on the proposed motion under the proposed schedule.

10. Undersigned counsel has exchanged emails with counsel for the government, Assistant United States Attorney, Kaitlin Klamann, who has indicated that the government objects to the filing of the proposed motion but agrees to the proposed expedited briefing schedule if leave is granted.

For the above-stated reasons, Mr. Cua respectfully requests that the Court grant leave to file the attached motion to enter an order setting an expedited briefing schedule. A proposed order accompanies this motion.

Respectfully submitted,

DATED: January 16, 2023

/s/ William E. Zapf
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January 2023, I filed the foregoing with the Clerk of the United States District Court for the District of Columbia by using the CM/ECF system, which system I understand has provided electronic notice counsel of record.

Dated: January 16, 2023

/s/ William E. Zapf

William E. Zapf