

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

UNITED STATES OF AMERICA	:	
	:	CASE NO. 1:21-cr-00341-CKK
v.	:	
	:	
JOHN DOUGLAS WRIGHT,	:	
	:	
Defendant.	:	

ORDER

The Court, having considered the representations of the United States and defense counsel regarding the potential plea, complexity of the case, the voluminous discovery, the ends of justice, and the need for a reasonable time necessary for effective preparation taking into account the exercise of due diligence, as well as the stipulations by defense counsel, and for good cause appearing, the Court makes the following findings:

Good cause exists to continue the status conference and that time be excluded from the Speedy Trial Act, 18 U.S.C. § 3161 et seq. (the “STA”), 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).

FACTUAL BACKGROUND

Defendant is charged via indictment with offenses related to crimes that occurred at the United States Capitol on January 6, 2021. In brief, on that date, as a Joint Session of the United States House of Representatives and the United States Senate convened to certify the vote of the Electoral College of the 2020 U.S. Presidential Election, members of a large crowd that had gathered outside forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. Scores of individuals entered the U.S. Capitol without authority to be there. As a result, the Joint

Session and the entire official proceeding of the Congress was halted until the Capitol Police, the Metropolitan Police Department, and other law enforcement agencies from the city and surrounding region were able to clear the Capitol of hundreds of unlawful occupants and ensure the safety of elected officials. This event in its entirety is hereinafter referred to as the “Capitol Attack.”

The investigation and prosecution of 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. Over 300 individuals have been charged in connection with the Capitol Attack. The investigation continues and the government expects that at least one hundred additional individuals will be charged. While most of the cases have been brought against individual defendants, the government is also investigating conspiratorial activity that occurred prior to and on January 6, 2021. The spectrum of crimes charged and under investigation in connection with the Capitol Attack includes (but is not limited to) trespass, engaging in disruptive or violent conduct in the Capitol or on Capitol grounds, destruction of government property, theft of government property, assaults on federal and local police officers, firearms offenses, civil disorder, obstruction of an official proceeding, possession and use of destructive devices, and conspiracy.

Defendants charged and under investigation come from throughout the United States, and a combined total of over 900 search warrants have been executed in almost all fifty states and the District of Columbia. Multiple law enforcement agencies were involved in the response to the Capitol Attack, which included officers and agents from U.S. Capitol Police, the District of Columbia Metropolitan Police Department, the Federal Bureau of Investigation, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United

States Secret Service, the United States Park Police, the Virginia State Police, the Arlington County Police Department, the Prince William County Police Department, the Maryland State Police, the Montgomery County Police Department, the Prince George's County Police Department, and the New Jersey State Police. Documents and evidence accumulated in the Capitol Attack investigation thus far include: (a) more than 15,000 hours of surveillance and body-worn camera footage from multiple law enforcement agencies; (b) approximately 1,600 electronic devices; (c) the results of hundreds of searches of electronic communication providers; (d) over 210,000 tips, of which a substantial portion include video, photo and social media; and (e) over 80,000 reports and 93,000 attachments related to law enforcement interviews of suspects and witnesses and other investigative steps. As the Capitol Attack investigation is still on-going, 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.

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. Accordingly, the government, in consultation with the Federal Public Defender, is developing a comprehensive plan for handling, tracking, processing, reviewing and producing discovery across the Capitol Attack cases. Under the plan, the discovery most directly and immediately related to pending charges in cases involving detained defendants will be provided within the next thirty to sixty days. Cases that do not involve detained defendants will follow thereafter. Such productions will also be supplemented on an on-going basis. In the longer term,

the plan will include a system for storing, organizing, searching, producing and/or making available voluminous materials such as those described above in a manner that is workable for both the government and hundreds of defendants. This latter portion of the plan will require more time to develop and implement, including further consultation with the Federal Public Defender.

Defendant was arrested on May 3, 2021 after being charged by complaint. He appeared in the Northern District of Ohio on May 3, 2021, was temporarily detained and ultimately released on May 6, 2021 after a detention hearing.

On May 5, 2021, the Grand Jury charged the Defendant with: 18 U.S.C. § 231(a)(3) (Civil Disorder); 18 U.S.C. §§ 1512(c)(2), 2 (Obstruction of an Official Proceeding); 18 U.S.C. § 1752(a)(1) (Entering and Remaining in a Restricted Building or Grounds); 18 U.S.C. § 1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds); 18 U.S.C. § 1752(a)(4) (Engaging in Physical Violence in a Restricted Building or Grounds); 40 U.S.C. § 5104(e)(2)(D) (Disorderly Conduct in the Capitol Grounds or Buildings); 40 U.S.C. § 5104(e)(2)(F) (Act of Physical Violence in the Capitol Grounds or Buildings); and 18 U.S.C. § 1001 (False Statement to Federal Agent).

Defendant appeared and was arraigned before Magistrate Judge Meriweather on May 18, 2021. Time was excluded until the defendant appeared before this Court on May 24, 2021. At that status hearing this Court scheduled the upcoming status conference and excluded time pursuant to the ends of justice.

ENDS OF JUSTICE FINDINGS

The ends of justice served by a continuance and extension outweigh the best interest of the public and the defendant in a speedy trial. 18 U.S.C. § 3161 (h)(7)(A). Moreover, failure to grant

the extension of the time for indictment would be likely result in a miscarriage of justice. 18 U.S.C. § 3161 (h)(7)(B)(i).

Mr. Wright will not be prejudiced by the requested continuance and extension in that he is not in custody and agrees that the time between this motion and the newly set indictment/information return date should be excluded under the Speedy Trial Act.

COVID-19 Pandemic: The continuing pandemic is affecting the trial schedule. In recognition of the current high rate of transmission of the Delta variant in the District of Columbia, Chief Judge Howell issued Standing Order 21-47, limiting the number of jury trials that may be conducted at one time until at least October 31, 2021. Further, the Court found that “for those cases that cannot be tried consistent with those health and safety protocols and limitations, the additional time period from August 31, 2021 through October 31, 2021 is excluded under the Speedy Trial Act as the ends of justice served by the continuances to protect public health and safety and the fair rights of a defendant outweigh the best interest of the public and any defendant’s right to a speedy trial, pursuant to 18 U.S.C. 3161(h)(7)(A).” (As detailed in Standing order 21-47, the Court had previously found that due to the exigent circumstances created by the COVID-19 pandemic, the time period from March 17, 2020 through August 31, 2021, would be excluded in criminal cases under the STA.) The current restrictions on counsel, particularly those impacting the ability to communicate with witnesses, have slowed the normal litigation process. Thus, the effect of the continuing pandemic on the ability to hold jury trials supports tolling of the STA in this case.

The government has provided defense counsel with significant case-specific discovery including videos and interviews, as outlined in discovery notices filed with the Court. The

government filed a memorandum regarding the status of discovery, incorporated herein by reference.

The United States has diligently been working to collect, review, and process the massive amount of discovery generated from the January 6th riot cases. However, the case presents significant logistical complexity, and the United States is considering additional possible charges beyond those contained in the complaint. Specifically, this case involves thousands of hours of video footage; many different witnesses; and large amounts of records from various sources. Given the complexity of the case, the number of witnesses, the parties request this additional continuance so both parties can be prepared.

The government's approach to the production of voluminous discovery, as elaborated in our previously filed memoranda, is consistent with the *Recommendations for Electronically Stored Information (ESI) Discovery Production* developed by the Department of Justice and Administrative Office of the U.S. Courts Joint Working Group on Electronic Technology in the Criminal Justice System. It is also the generally accepted approach in cases involving voluminous information. Notably, every circuit to address the issue has concluded that, where the government has provided discovery in a useable format, and absent bad faith such as padding the file with extraneous materials or purposefully hiding exculpatory material within voluminous materials, the government has satisfied its *Brady* obligations. The need for reasonable time to address discovery obligations is among multiple pretrial preparation grounds that Courts of Appeals, including our circuit, have routinely held sufficient to grant continuances and exclude time under the STA – and in cases involving far less complexity in terms of the volume and nature of data, and the number of defendants entitled to discoverable materials. Given the due diligence

the United States continues to apply to meet its discovery obligations, an ends-of-justice continuance under the STA is warranted.

Based on the foregoing findings, **IT IS HEREBY ORDERED:**

Given the potential pre-trial resolution, the voluminous discovery, the complex nature of the case, the ends of justice, and the need for a reasonable time necessary for effective preparation taking into account the exercise of due diligence, the Stipulated Motion to Continue and to Exclude Time Under the Speedy Trial Act, is hereby **GRANTED**.

The status conference currently scheduled for November 30, 2021 is **VACATED**.

The ends of justice served by the granting of such a 60-day continuance and extension outweigh the best interests of the public and defendant in a Speedy Trial. 18 U.S.C. § 3161(h)(7)(A).

This case is unusual and complex due to the number of witnesses, volume of discovery, and the nature of the prosecution that it is unreasonable to expect adequate preparation for pretrial proceedings within the current time limit. 18 U.S.C. § 3161(h)(7)(B)(ii).

Counsel for the defendant and the United States Attorney need additional time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv).

Failure to grant the continuance of the extension of the time would be likely result in a miscarriage of justice and prevent a fair trial. 18 U.S.C. § 3161(h)(7)(B)(i).

The Court has carefully balanced the need for the public and the defendant to have a speedy trial against the need for a fair trial, preliminary hearing, grand jury session, and adequate

preparation and finds that the scales tip in favor of granting a continuance and extension.

The Status Conference is continued to JANUARY 27, 2022, at 10:00 a.m. by Zoom Videoconference; and it is further **ORDERED** that the time period from the date the motion to continue was filed through and including the newly scheduled status conference is hereby excluded from the computation of time within which a trial must commence under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.* Based on this exclusion, the Court has calculated that Defendant's new 70-day deadline is April 7, 2022.

/s/

HONORABLE COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE