

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
 v. : Criminal No. 21-cr-154 (RJL)  
 :  
 WILMAR JEOVANNY :  
 MONTANO ALVARADO, :  
 :  
 Defendant. :

**OPPOSITION TO DEFENDANT’S MOTION TO STAY CASE**

On July 28, 2022, defendant Wilmar Jeovanny Montano Alvarado filed a motion to stay (ECF No. 41) this criminal case pending the U.S. Court of Appeals’ decision on the government’s June 22, 2022 interlocutory appeal of Judge Carl J. Nichols’ decision to dismiss the 18 U.S.C. § 1512(c)(2) charge in *United States v. Miller*, No. 1:21-CR-00119 (CJN), 2022 WL 823070 (D.D.C. Mar. 7, 2022), *reconsideration denied*, No. 1:21-CR-00119 (CJN), 2022 WL 1718984 (D.D.C. May 27, 2022), *appeal filed* No. 22-3041 (D.C. Cir.).

The government opposes staying this case.

First, there is no timetable for resolution of the *Miller* appeal; assuming no extensions, the briefing schedule will not be complete until the end of September 2022, and the D.C. Circuit will likely hear oral argument and then need to issue its decision. Second, the pending *Miller* appeal is not dispositive of this entire case; it presents a legal question about only one of the seven counts (and one of three felonies) charged against the defendant here. Third, the defendant has not filed a motion to dismiss the count charging a violation of 18 U.S.C. § 1512(c)(2), so there is no reason to stay the case pending the *Miller* litigation (though the government would oppose a stay even if the defendant filed such a motion). Fourth, should the D.C. Circuit hold that Section 1512(c)(2) may not be applied to the alleged conduct at issue here, this Court or the D.C. Circuit could address that issue at some later point in this case. Fifth and finally, on August 2, 2022, Judge Christopher

R. Cooper considered and denied a similar defense request in *U.S. v. Bacon*, 21-cr-0488-CRC, stating in full:

MINUTE ORDER denying 44 Defendant's Motion to Continue Trial and Exclude Time Under the Speedy Trial Act. The Court is set to hold trial in this matter on October 17, 2022. The Defendant has moved for a continuance on the ground that a legal issue presented in his 43 Motion to Dismiss Count Six of the Indictment is currently pending on appeal before the D.C. Circuit. The Court denies the motion. The operative indictment charges Mr. Bacon with six counts. All six are based on the same factual predicate—Mr. Bacon's alleged conduct at the U.S. Capitol on January 6, 2021. The pending D.C. Circuit appeal presents a purely legal question about only one of the counts—Obstruction of an Official Proceeding and Aiding and Abetting the Obstruction of an Official Proceeding, in violation of 18 U.S.C. sections 1512(c)(2) and 2. Should the D.C. Circuit agree with Mr. Bacon that Section 1512 may not be applied to the alleged conduct at issue here, the Court—or the D.C. Circuit on direct appeal in the event of a conviction following trial—could address that issue later. But that possibility presents neither a need nor a reason to otherwise postpone trial on this matter. Accordingly, the Court finds that a continuance will not conserve judicial resources and is not in the best interest of the parties or the Court. So Ordered by Judge Christopher R. Cooper on 8/2/2022. (lcrc2) (Entered: 08/02/2022)

In sum, to stay a prosecution for an indefinite time requires a compelling justification, which is not present here.<sup>1</sup> The Court should deny the defendant's motion to stay this case.

---

<sup>1</sup> The undersigned is not aware of any Judge who has granted a stay pending the D.C. Circuit's decision in *Miller*, except for Judge Nichols in *United States v. Bisignano*, 21-cr-036-CJN (July 12, 2022). In that case, the defendant had previously pled guilty to Section 1512(c)(2) and other counts on August 4, 2021. Following Judge Nichols' subsequent opinion in *Miller*, the defendant moved to withdraw her guilty plea (also before Judge Nichols) based on a claim of actual innocence. Under those unique circumstances, which are not present here, Judge Nichols stayed the case pending the *Miller* appeal.

Respectfully submitted,

MATTHEW M. GRAVES  
UNITED STATES ATTORNEY  
D.C. Bar Number 481052

By: /s/ Samuel S. Dalke  
Samuel S. Dalke  
Assistant United States Attorney – Detailee  
PA Bar No. 311803  
601 D Street, N.W.  
Washington, D.C. 20530  
Office: 717-515-4095  
[samuel.s.dalke@usdoj.gov](mailto:samuel.s.dalke@usdoj.gov)

CERTIFICATE OF SERVICE

On this 11th day of August, a copy of the foregoing was served on counsel of record for the defendant via the Court's Electronic Filing System.

By: /s/ Samuel S. Dalke  
Samuel S. Dalke  
Assistant United States Attorney – Detailee