

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

United States	)	
	)	
v.	)	NO. 1:21cr57
	)	
Nicholas Rodean	)	
	)	
Defendant.	)	
	)	

**RESPONSE TO GOVERNMENT MOTION IN LIMINE REGARDING  
AUTHENTICATION OF CERTAIN VIDEO EVIDENCE**

Comes now the accused, Nicholas Rodean, and offers this response to the government’s Motion in Limine ECF 47. Mr. Rodean asserts as follows:

1. As recited in previous filings, this Court has twice declined to extend the speedy trial clock for Mr. Rodean’s case due to the government’s failure to complete discovery in a reasonable time. ECF 46 (Defendant’s response to government’s motion to reconsider). In response to this ruling, the government has filed a series of motions seemingly designed to circumvent the Court’s speedy trial ruling.
2. On February 8, 2022 the government filed a motion in limine to limit cross examination of certain witnesses. ECF 35. The motion was filed approximately two months before the motions deadline. The Court denied the motion in two days. ECF. 36.
3. On March 17, 2022, the government filed a Motion to Reconsider this Court’s speedy trial rulings. ECF 42. The motion did not recite this Court well-established for motions to reconsider. It did not allege a change in controlling

law or newly discovered evidence. This Court denied the motion in a minute order. ECF 3.29.22.

4. On April 1, 2022, the government filed the present Motion in Limine to Authenticate Certain Video Evidence. ECF 47. The motion raises a relatively routine question of video authentication which would ordinarily be decided by the Court during the trial. The motion does not present any novel legal issues which would seem to necessitate pretrial litigation.
5. The government's motion is premature because the Court cannot consider authentication without the benefit of the foundation laid by the government at trial. The motion should be denied without prejudice.
6. Moreover, this Court should retroactively exclude from the speedy trial calculation the time associated with the current motion as well as the previous Motion in Limine (ECF 35) and the Motion to Reconsider (ECF 42).
7. This Court need not exclude speedy trial time based on a pretrial motion which the Court determines was pretextual, *i.e.* filed for purposes of tolling the speedy trial clock. *See, e.g. United States v. Richardson*, 421 F.3d 17, 27-29 (1st Cir. 2005)(considering whether government motion was "pretextual" for speedy trial purposes); *United States v. Rojo-Alvarez*, 944 F.2d 959, 966 (1st Cir. 1991) (excluding time based on pretrial motions where "there appears to be no evidence of pretextual filing on the part of the government").
8. Taken as a whole, the timing and substance of the government's motions compels the conclusion that the primary purpose of filing was to manipulate the speedy trial calculations rather than to obtain the relief requested in the motion.

As stated above, the first motion in limine was filed almost two months before the motions deadline. The Motion to Reconsider did not even attempt to meet the standards this Court has set for such motions. Finally, the current Motion in Limine raises a routine evidentiary issue which obviously did not necessitate pretrial litigation.

9. This Court should conclude that the government's pretrial motions were pretextual and that the time associated with them should not be excluded from speedy trial

For the foregoing reasons, Mr. Rodean respectfully requests that the government's motion in limine be denied without prejudice. Mr. Rodean further requests that this Court hold that the time periods associated with ECF 35, ECF 42 and ECF 47 are not excludable for Speedy Trial purposes.

Respectfully Submitted,

By:

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**CERTIFICATE OF SERVICE**

I have served this filing on the government through the ecf system.

Respectfully Submitted,

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