



Disruptive Conduct in a Restricted Building or Grounds; Knowingly Committing an Act of Physical Violence in any Restricted Building or Grounds; 40 U.S.C. § 5104(e)(2)(D) and (F), Violent Entry and Disorderly Conduct in the Capitol Grounds or Buildings and engaging in an Act of Physical Violence in the Capitol Grounds or Buildings. The United States is seeking a continuance based on the following: (1) the United States has provided the majority of individualized discovery to Defendants, though it continues to provide global discovery generated from other sources; (2) after review of discovery the government has extended plea offers to both defendants; (3) failing successful plea negotiations and taking into account the exercise of due diligence, the Defendants and the Government will need reasonable time necessary to prepare for trial and, in that regard, counsel for Defendant Jason Owens will be in a month-long jury trial beginning April 7, 2022.

To date, the Government has provided the majority of the most relevant individualized discovery to defense counsel. The Government is also continuing to provide global discovery in the form of evidence from other charged defendants' devices, social media accounts, and other sources which have not yet been identified or examined. The Government extended a plea offer to Jason Owens on March 14, 2022. The Government extended a plea offer to Grady Owens on March 17, 2022. Both defendants have until April 11, 2022 to accept or reject the offers, though the date may be extended. Finally, counsel for Defendant Jason Owens will be in a month-long jury trial beginning April 7, 2022, likely lasting into the first week of May. The parties are requesting an additional 60 days to allow counsel for the defendants an adequate time period to review and consider the plea offers made to each of their clients and to discuss the offers with their respective clients. The offers could very well result in an agreeable resolution that would ultimately

preserve judicial resources. Should the parties be unable to reach resolution, they will thereafter inform the Court of proposed available dates and will begin preparing for trial.

### ARGUMENT

Section 3161(h) of the Speedy Trial Act sets forth certain periods of delay which the Court must exclude from the computation of time within which a trial must commence. As is relevant to this motion for a continuance, pursuant to subsection (h)(7)(A), the Court must exclude:

Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

18 U.S.C. § 3161(h)(7)(A). This provision further requires the Court to set forth its reasons for finding that that any ends-of-justice continuance is warranted. *Id.* Subsection (h)(7)(B) sets forth a non-exhaustive list factors that the Court must consider in determining whether to grant an ends-of-justice continuance, including:

- (i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.
- (ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.  
...
- (iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

18 U.S.C. § 3161(h)(7)(B)(i)(ii) and (iv). Importantly, “[i]n setting forth the statutory factors that justify a continuance under subsection (h)(7), Congress twice recognized the importance of adequate pretrial preparation time.” *Bloate v. United States*, 559 U.S. 196, 197 (2010) (citing §3161(h)(7)(B)(ii), (B)(iv)). Finally, an interests-of-justice finding is within the discretion of the Court. *See, e.g., United States v. Rojas-Contreras*, 474 U.S. 231, 236 (1985); *United States v. Hernandez*, 862 F.2d 17, 24 n.3 (2d Cir. 1988).

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). The need for a reasonable time to continue to review voluminous discovery produced is among multiple pretrial preparation grounds that Courts of Appeals have routinely held sufficient to grant continuances and exclude the time under the Speedy Trial Act. *See, e.g., United States v. Bikundi*, 926 F.3d 761, 777-78 (D.C. Cir. 2019). The defendants would also like the additional time to review and consider the outstanding plea offers and would like until the April 11<sup>th</sup> deadline, with the potential for an extension, to consider their options. Finally, in light of his trial in April 2022, Defendant Jason Owens’ counsel would like the additional time to be able to meaningfully consult with his client about the Government’s plea offer. Accordingly, the ends of justice served by granting a request for a continuance outweigh the best interest of the public and the Defendants in a speedy trial.

Government’s counsel notified Defendants’ counsel of the filing of this motion, and they join on behalf of each of their clients to the motion.

WHEREFORE, the Government respectfully requests that this Court grant the motion to continue the Status Hearing set for March 25, 2022 and for an additional 60 days from the date this Court enters an Order on this motion through and including the date of the next hearing, and

that the Court exclude the time within which the trial must commence under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, on the basis that the ends of justice served by taking such actions outweigh the best interest of the public and Defendants in a speedy trial pursuant to the factors described in 18 U.S.C. § 3161(h)(7)(A), (B)(i), (ii), and (iv).

Respectfully submitted,

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