

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 21-cr-495 (ABJ)
	:	
DANIEL GRAY,	:	
	:	
Defendant.	:	

**UNITED STATES’ NOTICE AND REQUEST FOR HEARING
ON ASCERTAINMENT OF COUNSEL REGARDING
ATTORNEY PIERCE’S MOTION TO WITHDRAW**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully files this Notice and Request for Hearing regarding Attorney Pierce’s withdrawal motion (ECF No. 82), which was filed just over one month before trial is set to commence in this matter—as the Court described it, “on the eve of trial.”

FACTUAL BACKGROUND

This felony case was originally indicted on July 28, 2021. On July 19, 2022, the Court set a bench trial for January 18, 2023. ECF No. 12. On July 30, 2022, Attorney Pierce filed his notice of appearance and took over the defendant’s case. ECF No. 43. On August 18, 2022, the defendant moved to continue all deadlines.¹ ECF No. 44.

¹ That request stated as follows:

Defense counsel acknowledges the court’s desire to bring this case to trial in an expedient fashion. However, defense counsel respectfully suggests that the ends of justice would best be served if defense counsel were given additional time to review the evidence to help coordinate defense experts and witnesses and generally prepare for trial. Defense counsel acknowledges that the request to continue the trial date may impact the court’s July 19, 2022, Scheduling Order (Dkt. No. 42).

In its August 19, 2022 Minute Order, the Court vacated all trial deadlines so that new defense counsel could prepare for trial and/or so that the parties could discuss a potential plea. On August 22, 2022, Assistant Federal Public Defender Maria Jacobs withdrew from the case. ECF No. 45.

The Court set the current trial date, now a jury trial, on February 2, 2023. *See* Feb. 2, 2023 Minute Entry. Despite agreeing to this trial date, on April 4, 2023, defense counsel subsequently scheduled another felony jury trial beginning on September 5, 2023, the same date on which the pre-trial conference in the instant matter had already been scheduled. *See United States v. Zink*, 21-cr-191-JEB, Scheduling Order (ECF No. 73); Apr 4, 2023, Minute Entry.

On July 25, 2023, government counsel in the *Zink* case sent an email to Attorney Pierce inquiring about his trial readiness for their September 5, 2023 trial. Receiving no response, they sent a follow-up email on August 2, 2023. Separately, counsel herein sent an email to Attorney Pierce on August 1, 2023, noting the following: (1) the *Gray* trial was currently scheduled to commence on Tuesday, September 12, 2023, (2) the government was aware of the *Zink* trial, which was a felony jury trial set to commence on Tuesday, September 5, 2023, the same date as the pre-trial conference in *Gray*, (3) Attorney Pierce also had a felony sentencing in *United States v. Thomas*, 21-cr-00552-DLF, scheduled for Wednesday, September 6, 2023 (an apparent conflict with *Zink*), and (4) the government hoped to bring any scheduling concerns to the Court promptly. Later that day, Attorney Pierce responded, acknowledging his current trial schedule was not feasible, and stating he would get back to the government shortly.

Then, on August 3, 2023, government counsel in both the *Zink* and *Gray* trials received an email from Attorney Pierce that conveyed he planned to seek a continuance for one of the two trials but preferred to seek to continue the *Gray* trial. His email again noted his full trial schedule, and attached a PDF list of his currently scheduled trials, which included the following:

8/8/23	Kastner (Magistrate Judge Upadhyaya)
9/5/23	Zink (Chief Judge Boasberg)
9/12/23	Gray (Judge Jackson)
9/26/23	Baez (Judge Friedman)
10/2/23	Gunby (Judge Friedman)
10/16/23	Brock (Judge Nichols)
10/16/23	Montgomery (Judge Moss)
10/17/23	Todd III (Magistrate Judge Upadhyaya)
12/1/23	Slaughter et al (Judge Lamberth)
1/8/24	Dillon (Judge Chutkan)
1/22/24	Rumson (Judge Nichols)
2/12/24	Westbury et al (Judge Contreras)

The government promptly responded that it would oppose a continuance in either trial, but that should anything be continued, the *Gray* trial, in the government's view, should go forward because it was set first.

On August 4, 2023, government counsel in both the *Zink* and *Gray* trials then received an email from Attorney Pierce noting the overlapping trial problem had likely been resolved because Mr. Gray had decided he wanted different representation. Attorney Pierce noted he would move to withdraw that day. He then did so.

At 3:30 p.m. on Friday, August 4, 2023, Magistrate Judge Upadhyaya held a hearing in *United States v. Kastner*, 21-cr-725-MAU, where Attorney Pierce is also defense counsel of record. A misdemeanor jury trial in *Kastner* was set to begin August 8. At the status hearing, Magistrate Judge Upadhyaya continued the trial to September 14 – in the middle of the week when trial in this case (*Gray*) is scheduled. At the hearing, Attorney Pierce mentioned that he had sought to withdraw from this matter (*Gray*). He agreed to commencing the *Kastner* trial on September 14, 2023, so long as he could step out of its September 11, 2023 pre-trial conference for any jury questions from the *Zink* trial (as noted, the *Zink* jury trial is scheduled to begin on Tuesday, September 5, 2023, four court days before the newly-set *Kastner* hearing).

HEARING REQUEST

The government is ready to start trial as scheduled in this case, which has been pending since 2021. The trial date was set over six months ago. Motions *in limine* were filed August 4, and, as the Court's Minute Order noted, the Joint Pretrial Statement is due September 1.

Given the impending deadlines, and in light of the additional facts set forth in this Notice, the government respectfully requests that the Court set a hearing as soon as possible after the Court's August 9, 2023 objection deadline, to address ascertainment of counsel and the trial date in this matter.

For the foregoing reasons, the government respectfully requests a hearing to ascertain the status of Mr. Gray's representation and currently scheduled trial.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
D.C. Bar No. 481052

By: */s/ Michael L. Jones*
MICHAEL L. JONES
DC Bar No. 1047027
Trial Attorney
Capitol Riot Detailee
601 D St. NW Washington, DC 20530
(202) 252-7820
michael.jones@usdoj.gov

SAMANTHA R. MILLER
Assistant United States Attorney
New York Bar No. 5342175
United States Attorney's Office
For the District of Columbia
601 D Street, NW 20530
Samantha.Miller@usdoj.gov