

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Case No.
	:	
KENNETH JOSEPH OWEN THOMAS,	:	1:21-cr-00552 (CRC)
	:	
Defendant	:	

DEFENDANT’S SHOW OF CAUSE
EVIDENTIARY HEARING REQUESTED
COURT-APPOINTED COUNSEL REQUESTED

Defendant KENNETH JOSEPH OWEN THOMAS (“Thomas”), through the undersigned counsel, John L. Pierce, Esq., with this Show of Cause in response to the Court’s MINUTE ORDER of May 11, 2023.

Court accuses defense counsel of lying and acting in bad faith. We attach the sworn declarations of John Pierce, Emily Lambert, and Roger Roots, esq., as exhibits. We also attach relevant email chains between defense counsel and the Assistant U.S. Attorneys Office. Attorneys Pierce and Roots also request that the Court appoint defense counsel for each lawyer, to address the Court’s allegations of bad faith. Additionally, counsel ask for a continuance of trial so that these accusations may be fully reviewed.

Defense counsel ask for an evidentiary hearing in which our law firm staff will testify, along with AUSA Samantha Miller and a DOJ representative with expertise

in Jan. 6 discovery. The Court should be informed of the difficulties faced by lawyers in this and other Jan. 6 cases in accessing, analyzing, downloading and processing the government's discovery exhibits.

The US Attorneys office utilizes three (3) databases to dispense its discovery to defense teams: evidence.com, relativity, and USAfx. None of them work well, in part because the government loads each file with data codes indicating who logged on or accessed each document, and when. The files on USAfx expire after 60 days. This window means that, for practical purposes, much discovery is never actually seen by defense lawyers. This is to the great advantage of the government.

Access to relativity is so difficult that defense lawyers generally have great difficulty logging in. Our firm has not been able to log into Relativity in several weeks. Generally we obtain an "access denied" error code when trying to access the site. We have notified the government repeatedly, but have received no help or assistance from the government.

In general there seems to be no rhyme or reason for different types of discovery documents being placed by the government in Relativity or USAfx or Evidence.com as opposed to the other database(s).

Again, these problems for defense teams are to the great benefit of federal prosecutors.

The government periodically 'dumps' new loads of discovery on defense lawyers in a haphazard manner. There have been 27 "global" discovery dumps

relating to Jan. 6 thus far. In some cases, exculpatory evidence has been dumped long after a particular defendant could have used it to clear himself. This apparently happened in the famed case of Jacob Chansley.

Defendants have repeatedly requested that federal prosecutors provide their exhibits on a flash drive. (We provided our exhibits to the government in flash drive form.) But instead the government provides their massive discovery mostly on USAfx platform which times out if not quickly downloaded.

By providing mere links to the discovery and exhibits in online databases, these government dumps require the defendants to have fast internet connections to download the files. Unfortunately the Wi-Fi speeds at the federal courthouse are insufficient for easy downloading of many large files, such as the video files in this case.

The defense has not objected to any of the government's physical exhibits. The defense was forced to object to many of the government exhibits without actually reviewing the exhibits, because we were informed by the Court that any failure to object would mean objections are waived.

Note, by comparison, the government has formally objected to each and every one (100%) of the defense witnesses proposed by the defense, with the exception of perhaps Thomas himself.

CONCLUSION

The defense requests (1) an evidentiary hearing so that the Court's allegations may be fully examined, as well as the above-described issues with discovery and exhibit access (2) separate court appointed counsel to represent both John Pierce and Roger Roots, and (3) continuance of trial.

Date: May 11, 2023

Respectfully Submitted,

/s/ John M. Pierce

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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on May 11, 2023, this motion was filed via the Court's electronic filing system, which constitutes service upon all counsel of record.

/s/ John M. Pierce

John M. Pierce