

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
<b>v.</b>	:	<b>Case No. 1:21-cr-719 (JEB)</b>
	:	
<b>CYNTHIA BALLENGER and</b>	:	
<b>CHRISTOPHER PRICE,</b>	:	
	:	
<b>Defendants.</b>	:	

**GOVERNMENT’S OPPOSITION TO DEFENDANTS’ MOTION FOR  
CONTINUANCE OF SENTENCING HEARING**

Defendant Christopher Price moves to continue his sentencing due to a six-week medical treatment that is scheduled to begin on October 4, 2023, after his sentencing hearing on September 29, 2023. ECF No. 129. Although she provides no reason for a continuance as to her sentencing, Defendant Cynthia Ballenger joins in the motion. *Id.* The Court should deny the motion because the defendants’ sentencings have already been delayed due to Defendant Price’s prior medical treatment and they provide no new reason to continue their hearing any further.

**PROCEDURAL HISTORY**

On March 21, 2023, following a two-day bench trial, this Court found the defendants guilty of violations of 18 U.S.C. §§ 1752(a)(1)-(2), and 40 U.S.C. §§ 5104(e)(2)(D) and (G). The Court scheduled their sentencing hearing for June 21, 2023. After the trial, the defendants filed motions for judgment of acquittal and new trial. ECF Nos. 108 and 109. During the briefing period on the motions, the government moved for and received a one-week extension to file its opposition to the motions. ECF No. 110. In a minute order dated May 30, 2023, the Court briefly continued the sentencing hearing to June 23, 2023, due to a conflict with the Court’s schedule. On June 13, 2023, the defendants moved to continue their sentencing hearing to allow them more time to respond to the presentence investigation report and any sentencing memoranda filed by the government. ECF

No. 118 at 1-2. On June 23, 2023, the Court continued the sentencing hearing to August 31, 2023, to allow the Court more time to rule on the defendants' post-trial motions.

On July 5, 2023, the Court contacted the parties by email to notify them of a scheduling conflict with the Probation Office, which required changing the date of the sentencing hearing. The Court offered to schedule the hearing for August 24, 2023, to which the government agreed. Defendant Price was unavailable for that date due to a medical appointment related to his present cancer diagnosis, but he was available later in the same week. The defendants, however, requested a date after August 31, 2023, to allow them the opportunity to receive and to provide the Court with information about Defendant Price's cancer results and treatment. The defendants proposed scheduling the hearing for September 1, 2023, but due to scheduling conflicts, the Court ultimately set the hearing for September 29, 2023.

On September 20, 2023, the defendants filed a motion to continue their sentencings to an unspecified date after the conclusion of his six-week cancer treatment scheduled to begin on October 4, 2023. ECF No. 129. In support of their motion, the defendants state that a continuance would give the defendants time to "consider their recommendations, legal arguments, and present any other relevant additional information in light of the new medical circumstances and treatment plan" and adjust their lives to Defendant Price's cancer diagnosis. *Id.* at 2. The defendants also request that the Probation Office update its presentence investigation report to account for the diagnosis. *Id.* Lastly, the defendants also ask for a continuance to allow the new U.S.S.G. § 4C1.1 to take effect on November 1, 2023. *Id.* at 3.

On September 21, 2023, the Court ordered to government to file its response to the defendants' motion, if any, by September 26, 2023. The government now files that response.

## DISCUSSION

The government acknowledges that district courts generally have power and discretion to set their own calendars, but certain limits apply. The Federal Rules of Criminal Procedure require that “[t]he court must impose sentence without unnecessary delay.” Fed. R. Crim. P. 32(b)(1). While no statute or common law precedent dictates precisely when sentencing must occur, *see Betterman v. Montana*, 578 U.S. 437, 447–48 (2016) (holding that the Sixth Amendment Speedy Trial Clause does not apply to the period between conviction and sentencing, but noting that “due process serves as a backstop against exorbitant delay”), sentencings in this district typically occur within 90 days of a guilty plea or trial verdict.

A defendant cannot unilaterally waive the right to a speedy sentencing. *Cf. Zedner v. United States*, 547 U.S. 489, 500 (2006) (holding the same with respect to the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*). This constraint comports with the fact that not only defendants, but the government and the public all have an interest to a speedy adjudication of criminal cases. *See United States v. Ray*, F.3d 184, 201 (2d Cir. 2009) (“a sentencing delay disserves a basic notion that, once convicted, an offender should be able to serve his sentence and be done with it.”) (internal quotation omitted); *United States v. Tapia*, 3:19-cr-57 (RAM), 2020 WL 4572334, \*2 (D.V.I. Aug. 7, 2020) (noting that the public has an interest in the efficient “operation of the courts and the judicial system,” which would be infringed “by unduly delaying a defendant’s sentencing”) (citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 50 n.8 (1987)); *see also Zedner*, 547 U.S. at 501 (noting the public interest in “preventing extended pretrial delay from impairing the deterrent effect of punishment.”). Consequently, in scheduling a sentencing, the Court must consider the impact of any delay on the purposes behind criminal sentencing, which are “retribution, deterrence, incapacitation, and rehabilitation.” *Tapia v. United States*, 564 U.S. 319, 325 (2011) .

Although the government is sympathetic to Defendant Price's current medical diagnosis, the defendants' arguments for a continuance could ultimately lead to an indefinite postponement of the proceedings. When the scheduling conflict arose in July of this year, the defendants requested a continuance to after August 31, 2023, because they wanted to provide the Court with the results of Defendant Price's cancer screening and treatment plan. They now return to the Court asking for another delay for what is, in essence, the same reason. Further, it is unclear what additional information the defendants could provide to the Court beyond what they already provided. Indeed, in the letter that the defendants attached to their motion, Dr. Gregory Gagnon discusses Defendant Price's medical history and asks the Court to "consider this diagnosis as well as the current and possible evolution of this malignancy in his sentencing." ECF No. 129-1. Therefore, the defendants have already taken the opportunity to provide the Court with the relevant information about his diagnosis and there is no need to provide an additional update. For similar reasons, the Probation Office does not need to update its presentence investigation report to provide the Court with the same information. Thus, a continuation of the defendants' sentencing is unnecessary.

With respect to the pending enactment of U.S.S.G. § 4C1.1, "the opportunity for a better sentence under a new Amendment to the Guidelines is not a legitimate reason to request a continuance" of a sentencing. *United States v. Tanner*, 544 F.3d 793, 796 (7th Cir. 2008) (internal citation omitted). Further, even if the pending Amendment was a legitimate reason for delay, the new Guideline is not appropriate in this case. While § 4C1.1 will arguably apply to future defendants who do not engage in violence or threats of violence, the January 6 riot was a violent attack that threatened the lives of legislators and their staff, interrupted the certification of the 2020 Electoral College vote count, did irrevocable harm to our nation's tradition of the peaceful transfer of power, caused more than \$2.9 million in losses, and injured more than one hundred

police officers. Every rioter, whether or not they personally engaged in violence or personally threatened violence, contributed to this harm. *See, e.g., United States v. Rivera*, 21-cr-60 (CKK), ECF No. 62 at 13 (“Just as heavy rains cause a flood in a field, each individual raindrop itself contributes to that flood. Only when all of the floodwaters subside is order restored to the field. The same idea applies in these circumstances. Many rioters collectively disrupted congressional proceedings and each individual rioters contributed to that disruption. Because [the defendant’s] presence and conduct in part caused the continued interruption to Congressional proceedings, the court concludes that [the defendant] in fact impeded or disrupted the orderly conduct of Government business or official functions”). The government in unaware of any judge in a January 6 cases issuing a lower sentence than it would have otherwise imposed based on § 4C1.1, and the court in *United States v. Nassif* specifically rejected such a request in *United States v. Nassif*, 21-cr-421 (JDB), where the defendant was convicted of violations of 18 U.S.C. §§ 1752(a)(1)-(2), and 40 U.S.C. §§ 5104(e)(2)(D) and (G).

Moreover, the Sentencing Commission enacted § 4C1.1 based on recidivism data for offenders released in 2010. *See* U.S. SENT’G COMM’N, RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (2021), available at <https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010>. Given the unprecedented nature of the Capitol attack, there is no reason to believe this historical data is predictive of recidivism for defendants who engaged in acts of political extremism on January 6. This is particularly so given the degree to which individuals, including defendants who have been sentenced, continue to propagate the same visceral sentiments which motivated the attack. Thus, the Court should not continue the defendants’ sentencing based on this pending modification to the Sentencing Guidelines.

Lastly, Defendant Ballenger has not stated any reasons in the motion as to her own justification for a continuance and the Court should deny the motion as to her on those grounds.

**CONCLUSION**

For these reasons, the United States requests that the Court deny the defendants' motion to continue their sentencings.

Respectfully submitted,

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