

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

**THE UNITED STATES OF AMERICA** §  
§  
vs. § **CAUSE NO.: 1:22-CR-15**  
§  
**ELMER STEWART RHODES, III** §

**MOTION FOR RECONSIDERATION OF DETENTION**

**COME NOW** PHILLIP LINDER and JAMES LEE BRIGHT, attorneys for Elmer Stewart Rhodes in the above referenced cause number and request this Court to reconsider the January 26, 2022 decision ordering the detention of the Defendant pending his trial.

**BACKGROUND**

On January 8, 2021, the Government Indicted Mr. Rhodes along with ten other co-defendants based upon events occurring in and around the United States Capitol on January 6, 2021. On January 24, 2022, Mr. Rhodes appeared before U.S. Magistrate Kimberly Priest Johnson in the Eastern District of Texas subsequent to his arrest on the instant indictment at which time a detention hearing was conducted. On January 27, 2022, the Judge issued a ruling ordering Mr. Rhodes detention pending trial on the instant charges. The Defendant is currently being detained at the Fannin County Jail in Bonham, Texas.

**LEGAL STANDARD**

While the Rules of Criminal Procedure do not explicitly provide for motions to reconsider, the courts in this district have repeatedly held that such motions are proper in criminal cases. See *U.S. v Sumia*, 643 F. Supp 2d 51, 60 (D.D.C. 2009), *U.S. v Slough*, No. CR 08-360 (RCL), 2014 WL 3734139, \*2 (D.D.C. July 29, 2014), *U.S. v Cabrera*, 699 F. Supp. 35, 40 (D.D.C. 2010). In deciding motions for reconsideration in criminal cases, the courts apply the same standard applicable in civil cases under F. R. Civ. P. 59(e). See *Sumia*, 643 F. Supp 2d. at 60; *Slough*, 2014 WL 3734139 at \*2. With respect to interlocutory orders, such as the order granting this Rule 15 deposition, reconsideration should be granted “as justice requires.” *Id.*

As the Court articulated in *Slough*, “asking ‘what justice requires’ amounts to

determining, within the Court’s discretion, whether reconsideration is necessary under the relevant circumstances.” Id. To “determine whether ‘justice requires’ reconsideration of a previously issued interlocutory order, the Court considers whether it ‘patently misunderstood a party, has made a decision outside the adversarial issues presented to the Court by the parties, has made an error not of reasoning but of apprehension, or where a controlling or significant change in the law or facts [has occurred] since the submission of the issue to the Court.’” Id. (citing *Singh v. George Washington Univ.*, 383 F. Supp. 2d. 99, 101 (D.D.C. 2005)). Moreover, “[e]ven if the appropriate legal standard does not indicate that reconsideration is warranted, the Court may nevertheless elect to grant a motion for reconsideration if there are other good reasons for doing so.” *Sumia* at 61 (citing *Isse v American Univ.*, 544 F. Supp. 2d 25, 29 (D.D.C. 2008)).

**WHEREFORE, PREMISES CONSIDERED**, Movant prays that the Court will grant his Motion for Reconsideration on the face of this pleading and requests that the Court set this matter for a hearing so that Movant may present evidence in support of this motion.

RESPECTFULLY SUBMITTED,

/s/ PHILLIP A. LINDER  
PHILLIP A. LINDER

3300 OAK LAWN AVENUE, SUITE 700  
DALLAS, TEXAS 75219  
(214) 252- 9900 OFFICE  
(214) 252-9902 FAX  
PHILLIP@THELINDERFIRM.COM  
TEXAS BAR No. 12363560

/s/ JAMES LEE BRIGHT  
JAMES LEE BRIGHT

3300 OAK LAWN AVENUE, SUITE 700  
DALLAS, TEXAS 75219  
TEL: (214) 720-7777  
FAX: (214) 720-7778  
JLBRIGHTLAW@GMAIL.COM  
TEXAS BAR No : 24001786

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF CONFERENCE**

I certify that I conferred with Kathryn Rakoczy, Counsel for the government regarding this Motion. Ms. Rakoczy does not oppose the filing of this Motion but does oppose the Court's granting of the Motion.

*/s/ PHILLIP A. LINDER*  
*ATTORNEY FOR DEFENDANT*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this Motion to Reconsider was served on the Assistant United States Attorney Kathryn Rakoczy via ECF on January 28, 2022.

*/s/ PHILLIP A. LINDER*  
*ATTORNEY FOR DEFENDANT*