

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

KALEB DILLARD,

Defendant.

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Case No. 23-cr-00049 (JMC)

JOINT MOTION TO CONTINUE AND TO EXCLUDE TIME UNDER THE SPEEDY TRIAL ACT AND TO CONTINUE STATUS CONFERENCE

The United States of America and Defendant Kaleb Dillard, through counsel, hereby move this Court for a 60-day continuance of the status conference set for May 4, 2023, and to 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 the defendant in a speedy trial pursuant to the factors described in 18 U.S.C. § 3161(h)(7)(A), (B)(i), (ii), and (iv) from the date this Court enters an Order on this motion through and including the date of the next hearing. In support of this motion, the parties state as follows:

FACTUAL BACKGROUND

As this Court is aware, the defendant in this case is charged via indictment with violating: 18 U.S.C. § 231(a)(3), Obstruction of Law Enforcement During Civil Disorder; 18 U.S.C § 111(a), Assaulting, Resisting, or Impeding Certain Officers or Employees (with physical contact); 18 U.S.C. § 1361, Destruction of Government Property; 18 U.S.C. § 1752(a)(1), (2), and (4), Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority, Disorderly and Disruptive Conduct in a Restricted Building or Grounds, and Knowingly Committing an Act of Physical Violence in any Restricted Building or Grounds; and

40 U.S.C. § 5104(e)(2)(D), (F), and (G), Violent Entry and Disorderly Conduct in the Capitol Grounds or Buildings, Engaging in an Act of Physical Violence in the Capitol Grounds or Buildings, and Parading, Demonstrating, or Picketing in the Capitol Building. The defendant is released on bond pending trial.

The parties seek a continuance of the status conference for the following reasons, which the parties believe demonstrate good cause to support the appropriate findings under the Speedy Trial Act: (1) the United States continues to provide individualized discovery to defendant, which includes discovery related to evidence seized during the search of defendant's residence, and continues to provide global discovery generated from other sources related to the January 6, 2021 riot at the U.S. Capitol; (2) counsel for defendant requires additional time to review discovery and potential evidence in this case with defendant in preparation for trial, conduct and complete an independent investigation of the case, and conduct and complete additional legal research including for potential pre-trial motions; and (3) in the event that plea negotiations prove to be unsuccessful and taking into account the exercise of due diligence, the defendant and the government will need reasonable time necessary to prepare for trial.

To date, the government has provided significant relevant individualized discovery to defendant. 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 has not yet been identified or examined. Defense counsel and defendant have and continue to review the individual and global discovery in this matter. Thus, the parties seek additional time to disclose discovery and allow counsel time to review and consider that discovery.

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 organize, produce, and review voluminous discovery 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). Accordingly, the ends of justice served by granting a request for a continuance outweigh the best interest of the public and defendant in a speedy trial.

The parties are available for reschedule status conference on July 7, July 11 in the afternoon, or July 13 in the afternoon.

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WHEREFORE, the parties respectfully request that this Court grant the joint motion to continue the status conference set for May 4, 2023, 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 Defendant 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,

MATTHEW M. GRAVES
United States Attorney
DC Bar No. 481052

By: /s/
NIALL M. O'DONNELL
DC Bar No. 991519
Assistant Deputy Chief—Detailee
Criminal Division, Fraud Section
United States Department of Justice
300 N. Los Angeles St., Suite 2001
Los Angeles, CA 90012
Tel. No. (202) 257-3295
Email: niall.odonnell@usdoj.gov

and

/s/ (w/ permission)
RANDY DEMPSEY
Dempsey, Steed, Stewart & Ritchey & Gache, LLP
1122 22nd Street North
Birmingham, Alabama 35234
Phone: (205) 328-0162
E-mail: dempsey@dempseysteed.com
Counsel for defendant Kaleb Dillard