

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 23-80101-CR-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

v.

**DONALD J. TRUMP and
WALTINE NAUTA,**

Defendants.

**GOVERNMENT’S MOTION FOR CONTINUANCE
AND PROPOSED REVISED SCHEDULING ORDER**

The government has received and reviewed the Court’s Omnibus Order Setting Trial Date and Establishing Pretrial Instructions and Sentencing Procedures (ECF No. 28). For the reasons discussed below, the government files this motion to continue the trial date to December 11, 2023, and to propose the associated intervening deadlines discussed below. A declaration in support of this motion is being filed herewith as Exhibit A. *See* Local Rule 7.6. Government counsel have conferred with counsel for defendant Trump and defendant Nauta in a good faith effort to resolve the subject matter of this motion by agreement. Defense counsel confirmed they do not oppose an adjournment of the current trial date and request a status hearing with the Court to address the schedule in this action. Defense counsel anticipate filing an opposition to this motion addressing their objections to the government’s proposed dates.

Relevant Procedural History

1. A grand jury in this district returned an indictment on June 8, 2023, against the defendants.

2. On June 13, 2023, defendant Trump made his initial appearance and entered a not guilty plea at his arraignment before Magistrate Judge Jonathan Goodman. The same day, defendant Nauta made his initial appearance before Judge Goodman, but has not yet been arraigned or entered a plea. Nauta's arraignment is scheduled for June 27, 2023.

3. On June 19, 2023, Magistrate Judge Bruce Reinhart granted the government's Motion for Protective Order (ECF Nos. 23, 27). The next day, this Court issued its Omnibus Order Setting Trial Date and Establishing Pretrial Instructions and Sentencing Procedures (ECF No. 28), which calendared trial for the two-week period commencing August 14, 2023. *Id.* at 1.

Discussion

4. 18 U.S.C. § 3161(h)(7)(B) contains a non-exhaustive list of factors that the Court should consider in deciding whether to grant a continuance. As an initial matter, this case is not so unusual or complex as to fall within 18 U.S.C. § 3161(h)(7)(B)(ii), because it has only two defendants, involves straightforward theories of liability, and does not present novel questions of fact or law.

5. However, the case does involve classified information and will necessitate defense counsel obtaining the requisite security clearances. As the Court is aware, that process is already underway. According to the Litigation Support Group, decisions on interim clearances for defense counsel can and should be made within 48 hours of submission of the relevant forms. Ex. A ¶ 4. Interim clearances will enable counsel to review the vast majority of classified discovery. *Id.* ¶ 5. The decision on granting the final clearance required to allow counsel's review of the remaining small number of classified documents is estimated to occur within 45 to 60 days of form submission. *Id.*

6. In addition, the associated legal process under the Classified Information Procedures Act, Pub. L. 96-456, 94 Stat. 2025, 18 U.S.C. App. III §§ 1-16 (“CIPA”), will inject additional time into the leadup to trial that otherwise would not be involved. The government has attached as Exhibit B to this Motion a proposed calendar for the CIPA process in this case, assuming a trial date with jury selection beginning on December 11, 2023. The government also filed today a motion under CIPA Section 2 for a pre-trial conference. (ECF No. 32) That motion describes the CIPA proceedings that this case is likely to entail.

7. Following entry of the Protective Order, the government has moved swiftly to produce all unclassified discovery, including Jencks Act material, to the defense, and already provided a significant portion of that production beginning on June 21, 2023. *See* ECF No. 30. The production includes evidence obtained via subpoena, evidence obtained via warrants, transcripts of grand jury testimony, memorialization of witness interviews, a reproduction of key documents that in the government’s view are pertinent to the case, and copies of closed-circuit television footage the government has obtained during its investigation. Even with the prompt production the government has arranged, the inclusion of additional time for defense counsel to review and digest the discovery, to make their own decisions about any production to the government, and for the government to review the same, is reasonable and appropriate.

8. As a result, in the government’s view, proceeding to trial on August 14, 2023, “would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation,” 18 U.S.C. § 3161(h)(7)(B)(iv), and the ends of justice served by granting this requested continuance “outweigh the best interests of the public and the defendant[s] in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A).

9. For all of these reasons, the government respectfully moves the Court for an Order¹:
- a) continuing trial in this matter until December 11, 2023 (jury selection to begin that date);
 - b) excluding the delay resulting from the continuance of trial from the speedy trial calculation in this case under 18 U.S.C. § 3161;
 - c) continuing the Calendar Call for trial until December 5, 2023;
 - d) setting the deadline for pretrial motions under Federal Rule of Criminal Procedure 12(b)(3) as July 31, 2023; and
 - e) continuing the deadline for all other pretrial motions and motions *in limine* until November 20, 2023.

Respectfully submitted,

JACK SMITH
Special Counsel

By: /s/ David V. Harbach, II
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Julie A. Edelstein
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¹ A proposed order is attached hereto as Exhibit C.

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ David V. Harbach, II _____

David V. Harbach, II

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DECLARATION OF JAY I. BRATT

Pursuant to 28 U.S.C. § 1746, I, Jay I. Bratt, declare as follows:

1. I am employed as a Counselor to the Special Counsel in the Office of Special Counsel Jack Smith. I am one of the prosecutors involved in the above-captioned case and am familiar with it. The statements in this declaration are based on my personal knowledge and my conversations with other prosecutors and staff of the Special Counsel's Office, as well as the Litigation Security Group ("LSG").

2. Among the discovery to be produced by the government in this case are certain materials that are classified (the "classified materials"). The level of classification varies across the classified materials, but a security clearance is required to lawfully view any of them. According to counsel for defendant Trump and defendant Nauta, no defense counsel currently possesses a security clearance. As a result, they will need to obtain one to lawfully view the classified materials.

3. LSG has committed to significantly expediting the issuance of security clearances

in this case.

4. To be granted an interim security clearance, defense counsel must submit a Standard Form 86 – Questionnaire for National Security (“SF-86”) and supporting documentation. To date, not all of the defense counsel have submitted their SF-86s. Once an SF-86 and supporting documentation are submitted, absent complicating circumstances, an interim clearance may be granted within a matter of days. In this case, LSG has committed to reaching an eligibility determination within 24-48 hours of the completed submission. Once defense counsel are granted interim security clearances, the government will be able to provide the vast majority of classified discovery, consisting of documents marked CONFIDENTIAL, SECRET, and TOP SECRET, including documents within the following Sensitive Compartmented Information Compartments: SI, SI-G, and TK.

5. However, interim security clearances are not sufficient for the government to provide in classified discovery a small number of documents—including some documents whose unauthorized retention is charged in the indictment—that contain restricted compartments for which a final security clearance and additional read-ins are required. LSG estimates that final clearances may be granted within 45 to 60 days of submission of the SF-86 and related documentation, depending upon the content of the applicant’s SF-86. The additional read-ins can be conducted promptly upon access approval.

6. On June 21, 2023, the government began producing unclassified discovery to the defense. The production includes documents obtained via subpoena, evidence obtained via warrants, transcripts of grand jury testimony, memorialization of witness interviews, a reproduction of key documents that in the government’s view are pertinent to the case, and copies of closed-circuit television footage the government has obtained during its investigation.

7. I have extensive experience with the Classified Information Procedures Act, Pub. L. 96-456, 94 Stat. 2025, 18 U.S.C. App. 3 §§ 1-16, and from that experience I am aware that the procedures provided for under that statute often lengthen the ordinary trajectory from indictment to trial. The additional procedures that may be required in this case are discussed in the government's Motion for a Pretrial Conference Pursuant to the Classified Information Procedures Act, which is being filed contemporaneously with this motion. These procedures address potential resolution of issues related to classified discovery and the use and admissibility of classified information at trial.

I declare under penalty of perjury that the foregoing is true and correct.



Jay I. Bratt

Dated: June 23, 2023

EXHIBIT B

The government proposes the below schedule for CIPA litigation in this case:

Date	Event
No later than July 10, 2023 (assuming timely interim clearance of defense counsel)	Government's initial production of classified discovery
August 14, 2023	Deadline for filing of government's first CIPA Section 4 Motion, if necessary
September 5, 2023	Deadline for all defense discovery requests
September 12, 2023	Deadline for any notice under CIPA Section 5
September 19, 2023, or seven days after defendant's initial CIPA Section 5 Motion, whichever is later	Deadline for government's initial Rule 16 expert disclosures and CIPA Section 10 notice
October 3, 2023, or 21 days after defendant's initial CIPA Section 5 Motion, whichever is later	Deadline for government to file initial CIPA Section 6(a) Motion Defense Rule 16 expert disclosures due
October 17, 2023, or fourteen days after government's initial CIPA Section 6(a) Motion, whichever is later	Deadline for defense to file response to government's CIPA Section 6(a) Motion Government's supplemental Rule 16 expert disclosures due
October 24, 2023, or seven days after defendant's response to government's initial CIPA Section 6(a) Motion, whichever is later	Deadline for government to file reply on its CIPA Section 6(a) Motion
October 31, 2023, or within seven days after government's reply on its CIPA Section 6(a) Motion, whichever is later	CIPA Section 6(a) Hearing

<p>November 14, 2023, or fourteen days from filing of a final written Order on government’s initial CIPA Section 6(a) Motion, whichever is later</p>	<p>Deadline for any government CIPA Section 6(c) Motion, if necessary</p>
<p>November 21, 2023, or seven days from filing of government’s CIPA Section 6(c) Motion, whichever is later</p>	<p>Deadline for defendant’s response to government’s CIPA Section 6(c) Motion, if necessary</p>
<p>November 28, 2023, or seven days from filing of defendant’s response to government’s CIPA Section 6(c) Motion, whichever is later</p>	<p>Deadline for government’s reply in support of its CIPA Section 6(c) Motion, if necessary</p>
<p>December 5, 2023, or seven days after the government’s reply on any CIPA Section 6(c) Motion, whichever is later</p>	<p>Hearing to address any remaining CIPA issues, including CIPA Section 6(c), if necessary</p>
<p>December 11, 2023</p>	<p>Trial (jury selection begins)</p>

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Defendants.

_____ /

PROPOSED ORDER

The Court has received the government's Motion for Continuance and Proposed Revised Scheduling Order (ECF No. ___), as well as the accompanying Declaration of Jay I. Bratt. Having reviewed the Motion, the accompanying Declaration, and all other relevant submissions of the parties, it is hereby

ORDERED that trial in this matter is continued until December 11, 2023, on which date jury selection will begin; and it is further

ORDERED that the delay resulting from the continuance of trial is excluded from the speedy trial calculation in this case, because the ends of justice served by continuing the trial date outweigh the best interests of the public and the defendants in a speedy trial; and it is further

ORDERED that Calendar Call for trial is continued until December 5, 2023; and it is further

ORDERED that any pretrial motions to be filed under Federal Rule of Criminal Procedure 12(b)(3) must be filed no later than July 31, 2023; and it is further

ORDERED that all other pretrial motions and motions *in limine* must be filed no later than November 20, 2023; and it is further

ORDERED that all provisions of this Court's Omnibus Order Setting Trial Date and Establishing Pretrial Instructions and Sentencing Procedures (ECF No. 28) that are not modified by this Order remain in full force and effect.

DONE AND ORDERED in Chambers in Fort Pierce, Florida, this ____ day of ____, 2023.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE