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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case Number 21-cr-165-RM-2

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHANDLER SIMBECK,

Defendant.

DEFENDANT’S UNOPPOSED JOINT MOTION TO EXCLUDE 180 DAYS FROM THE
REQUIREMENTS OF THE SPEEDY TRIAL ACT

Defendant, Chandler Simbeck, through counsel respectfully requests that this court issue an order excluding 180 days from the Speedy Trial Act computations and re-set the motions filing and trial dates accordingly. The following information is presented in support of this motion.

FACTUAL BACKGROUND

On May 18, 2021 the Mr. Simbeck and his co-defendant Mr. Foreman were indicted in the United States District Court for the District of Colorado. The indictment charges Mr. Simbeck with one count of Conspiracy to Defraud the United States and one count of Wire Fraud. An arrest warrant was issued for both defendants on that same day. Co-defendant Foreman had his initial appearance on May 26, 2021 before Magistrate Judge Kato. On June 2, 2021 an order was issued setting the case for a jury trial on August 2, 2021. On June 24, 2021 counsel for co-defendant Foreman filed an Unopposed Motion to Exclude 180-days from

1 the Requirements of the Speedy Trial Act. On July 2, 2021 this court granted co-defendant
2 Foreman’s motion. Trial was re-set to January 31, 2022 at 9:00 a.m.

3 Mr. Simbeck was arrested on September 21, 2021 in the District of Pennsylvania. He
4 was released in the District of Pennsylvania with conditions on September 26, 2021. On
5 November 4, 2021 Mr. Simbeck was ordered to appear for an initial appearance on November
6 18, 2021. Mr. Simbeck appeared on bond and entered a not guilty plea to the charges against
7 him. On November 24, 2021 this court applied the previously scheduled trial setting to Mr.
8 Simbeck. In addition, Mr. Simbeck was given a motions deadline of December 10, 2021.

9
10 **LAW**

11 Under 18 U.S.C §3161(h)(7) this court is authorized to exclude time from the limitations
12 set by the Speedy Trial Act if the ends of justice served by such a delay outweigh the best
13 interests of the public and defendant in a speedy trial. One factor the court may consider is
14 “[w]hether the failure to grant such a continuance in the proceeding would be likely to make a
15 continuation of such proceedings impossible, or result in a miscarriage of justice.” 18 U.S.C.
16 §3161(h)(7)(B)(i). In addition, the court may consider whether the failure to grant such a delay
17 “would deny counsel for the defendant...the reasonable time necessary for effective
18 preparation, taking into account the exercise of due diligence.” 18 U.S.C. §3161(h)(7)(B)(iv).
19 In evaluating a request for an ends of justice continuance, “the record must clearly establish the
20 district court considered the proper factors at the time such a continuance was granted.” *United*
21 *States v. Toombs*, 574 F.3d 1262, 1269 (10th Cir. 2009) (quoting *United States v. Gonzales*, 137
22 F.3d 1431, 1433 (10th Cir. 1998)). The record must contain an explanation for why the
23 occurrence of the event identified by the moving party as necessitating the continuance results
24 in the need for additional time. *Id.* at 1271. Simply stating the event followed by a conclusory
25 statement that the event necessitates further time does not satisfy the requirements of the Speedy
26 Trial Act. *Id.* at 1271-1272.

27 The Tenth Circuit has set fourth four factors a court should consider when evaluating if
28 a continuance should be granted. *United States v. West*, 828 F.2d 1468, 1470 (10th Cir. 1987).
Those factors are: (1) the diligence of the party requesting the continuance; (2) the likelihood

1 that the continuance, if granted, would accomplish the purpose underlying the request for
2 continuance; (3) the inconvenience to the opposing party, its witnesses and the court resulting
3 from the continuance; and (4) the need asserted for the continuance and the harm that could be
4 suffered as a result of the court's denial of the continuance.

5 6 **ARGUMENT**

7 The defendant's motion satisfies the factors set forth in both 18 U.S.C. §3161(h)(7) and
8 *United States v. West*.

9 With respect to 18 U.S.C. §3161(h)(7), the ends of justice served by this requested delay
10 outweigh the best interests of the public and the defendant. Counsel would be unable to
11 effectively represent the Mr. Simbeck under the current deadlines. As of the writing of this
12 motion, counsel has not received discovery in this case. Counsel is unable to advise Mr.
13 Simbeck in any capacity without having a meaningful opportunity to review discovery and
14 investigate possible defenses to these charges.

15 This motion also satisfies the factors outlined in *United States v. West*. (1) Counsel has
16 been diligent. As previously noted, counsel has not had the opportunity to review discovery in
17 this case and is awaiting discovery from United States Attorney's Office. (2). The granting of
18 this continuance would allow counsel time to receive and review discovery and adequately
19 prepare a defense for Mr. Simbeck. (3) There is no inconvenience to the United States
20 Attorney's Office. Undersigned counsel contacted Assistant U.S. Attorney Robert Brown via
21 electronic mail on December 6, 2021 and he indicated that he did not oppose this motion. (4)
22 Mr. Simbeck would suffer harm if this motion is not granted as he would be denied an adequate
23 defense to the charges.

24 25 **CONCLUSION**

26 As this court is aware, the date for trial in this case was ordered over 4-months before
27 Mr. Simbeck ever appeared in this district. A review of previous pleadings in this case indicates
28 that there is a significant amount of discovery in this case. Once received, review of discovery
will take a significant time to review. Undersigned counsel contacted counsel for co-defendant

1 Foreman via electronic mail. Ms. Butters indicated that she joins in this motion. For these
2 reasons counsel respectfully requests that 180-days be excluded from Speedy Trial calculations
3 and that the motions deadline and trial date be re-set accordingly.

4
5 Dated at Denver, Colorado this 7th day of December 2021

6
7 s/ Luis Jorge Castañeda

8 Jorge Castañeda

9
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17 Attorney for the Defendant
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1 I hereby certify that the foregoing document was electronically filed with the Clerk of the
2 court via ECF this 7th day of December 2021.

3 s/ Luis Jorge Castaneda

4 JORGE CASTAÑEDA

5 Attorney for Defendant
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