

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Criminal Case No. 21-cr-00165-RM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RUSSELL FOREMAN and
2. CHANDLER SIMBECK,

Defendants.

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

This matter is before the Court on the Defendant’s Unopposed Joint Motion to Exclude 180 Days from the Requirements of the Speedy Trial Act (the “Motion”) (ECF No. 32). The Defendant’s Motion requests a 180-day exclusion from the Speedy Trial Act computations and for a continuance of the trial date and for an extension for filing pretrial motions. Counsel for Defendant Russell Foreman does not oppose this request and joins in the Motion (ECF No. 37).

The Speedy Trial Act is “designed to protect a defendant's constitutional right to a speedy indictment and trial, and to serve the public interest in ensuring prompt criminal proceedings.” *United States v. Hill*, 197 F.3d 436, 440 (10th Cir. 1999). It requires that a criminal defendant’s trial commence within 70 days after his indictment or initial appearance, whichever is later. *See* 18 U.S.C. § 3161(c)(1); *United States v. Lugo*, 170 F.3d 996, 1001 (10th Cir. 1999). Certain periods of delay are excluded and do not count toward the 70-day limit. *See* 18 U.S.C. § 3161(h)(1)-(8). Among the authorized delays, “the Act excludes any period of delay ‘resulting

from a continuance granted by any judge . . . on the basis of its 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.” *Hill*, 197 F.3d at 440-441 (quoting 18 U.S.C. § 3161(h)(7)(A)).

The Speedy Trial Act provides, in pertinent part:

The following periods of delay shall be excluded . . . in computing the time within which the trial of any such offense must commence:

. . . .

(7)(A) Any period of delay resulting from a continuance granted by any judge . . . 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).

In order for a continuance to qualify as an excludable “ends of justice” continuance under § 3161(h)(7)(A), certain prerequisites must be satisfied. *Hill*, 197 F.3d at 441. First, the Court must consider the following factors listed in § 3161(h)(7)(B):

- (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 [the Act];
- (iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex;

(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) - (iv).

After considering these factors, the Court must then set forth, "in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Hill*, 197 F.3d at 441; § 3161(h)(7)(A). Although the Court's findings "may be entered on the record after the fact, they may not be made after the fact." *Hill*, 197 F.3d at 441 (quoting *United States v. Doran*, 882 F.2d 1511, 1516 (10th Cir.1989)). "Instead, '[t]he balancing must occur contemporaneously with the granting of the continuance because Congress intended that the decision to grant an ends-of-justice continuance be prospective, not retroactive[.]'" *Id.* (quoting *Doran*, 882 F.2d at 1516). The Court has discharged these duties.

The Defendant's Motion describes the various factors that he believes necessitate the exclusion of an additional 180 days in this case, and the Court adopts and incorporates those facts herein.

Defendants have been charged by Indictment with serious felonies. Mr. Foreman is charged with seven counts of Wire Fraud, four counts of Money Laundering, and one count of Conspiracy to Defraud the United States. Mr. Simbeck is charged with one count of Conspiracy to Defraud the United States, and one count of Wire Fraud. Defendant Foreman had his initial appearance on May 26, 2021. On June 2, 2021, the Court issued an Order Setting Trial Dates

and Deadlines (ECF No. 15). On June 24, 2021, counsel for Defendant Foreman filed an Unopposed Motion to Exclude 180 Days from the Requirements of the Speedy Trial Act (ECF No 17), which the Court granted on July 2, 2021 (ECF No. 18). On November 18, 2021, Defendant Simbeck appeared for his initial appearance. On November 24, 2021, the Court applied the previously scheduled trial settings to Mr Simbeck and gave him additional time for filing motions (ECF No. 31). Initial discovery was provided by the Government to counsel for Defendant Foreman on June 23, 2021. This discovery included approximately 135,665 pages of documents (50 gigabytes of data). As of December 7, 2021, counsel for Defendant Simbeck had not yet received discovery. Once discovery is received, he will require time to review the discovery.

The Court is sensitive to and mindful of the teachings of relevant case law, including the principles and holdings in *Bloate v. United States*, 559 U.S. 196 (2010); *United States v. Larson*, 627 F.3d 1198, (10th Cir. 2010); *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009); and *United States v. Williams*, 511 F.3d 1044 (10th Cir. 2007).

Based on the relevant record considered as a whole, the Court finds that it would be unreasonable to expect adequate preparation by Defendants, despite due diligence, for pretrial or trial proceedings within the time initially allowed under 18 U.S.C. § 3161(c). The Court has considered the factors which it must under 18 U.S.C. § 3161(h)(7)(B)(i)-(iv). As required by 18 U.S.C. § 3161(h)(7)(C), the Court has not predicated its ruling on congestion of the Court's calendar or lack of diligent preparation by counsel.

Accordingly, the Court FINDS that:

- (1) Failure to grant a continuance of trial beyond the time prescribed by 18 U.S.C. § 3161(c) would likely result in a miscarriage of justice, within the meaning of 18 U.S.C. § 3161(h)(7)(B)(i);
- (2) Even considering due diligence, failure to grant the motion would deny counsel for Defendants the reasonable time necessary for effective pretrial and trial preparation within the meaning of 18 U.S.C. § 3161(h)(7)(B)(iv); and
- (3) Therefore, the ends of justice served by granting the motion outweigh the best interests of the public and Defendants in a speedy trial within the meaning of 18 U.S.C. § 3161(h)(7)(A).

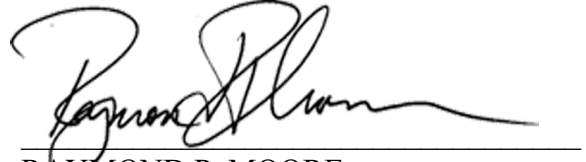
THEREFORE, IT IS HEREBY ORDERED that:

- (1) Defendant's Unopposed Motion to Exclude 180 Days from the Requirements of the Speedy Trial Act (ECF No. 32) is GRANTED;
- (2) **The 70-day clock, exclusive of tolled time, shall accordingly be extended from January 28, 2022 to July 27, 2022;**
- (3) The current Trial date and all pretrial deadlines and settings are hereby **VACATED**. The **five-day** jury trial is RESET for **July 25, 2022 at 9:00 a.m.** On the first day of trial, counsel shall be present at **8:30 a.m.** The Trial Preparation Conference is RESET for **July 15, 2022 at 3:00 p.m.** in Courtroom A601. Lead counsel who will try the case shall attend in person. Defendants are also required to be present; and

- (4) Defendants shall have to and including **March 1, 2022**, to file pretrial motions
and responses to these motions shall be filed by **March 15, 2022**.

Dated this 13th day of December, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", written over a horizontal line.

RAYMOND P. MOORE
United States District Judge