

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

UNITED STATES OF AMERICA

v.

HOLLIS GREENLAW (01)
BENJAMIN WISSINK (02)
CARA OBERT (03)
BRANDON JESTER (04)

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Case No. 4:21-CR-289-O

**UNOPPOSED MOTION FOR CONTINUANCE OF TRIAL
AND REQUEST FOR STATUS CONFERENCE TO SET
SCHEDULING AND ADDITIONAL PRETRIAL MOTION DEADLINES**

TO THE HONORABLE REED O’CONNOR:

Defendants Hollis Greenlaw, Benjamin Wissink, Cara Obert, and Brandon Jester (collectively, the “Defendants”), by and through counsel of record, file this Unopposed Motion for Continuance of Trial Setting, respectfully requesting that the Court enter an order continuing the current trial setting of December 6, 2021. The government does not oppose this motion.¹ Defendants further request the setting of a status conference, at this Court’s convenience, to schedule pretrial timetables and additional pretrial motion deadlines.²

I. INTRODUCTION

The grand jury indicted the Defendants on October 15, 2021. Dkt. 1. In summary, the indictment alleges that the Defendants were part of a scheme to defraud and conspiracy, ending in 2015, in connection with the business operations of United Development Funding (“UDF”). *See generally, id.* at ¶¶ 1-34. Specifically, the indictment charges the Defendants with conspiracy to

¹ The United States does not oppose a continuance, provided that the Defendants agree that this case qualifies for designation as a complex case for Speedy Trial Act purposes.

² The United States has stated that it opposes the extension of pretrial deadlines set in Judge Means’ Pretrial Order.

commit wire fraud affecting a financial institution, in violation of 18 U.S.C. §§ 1349 and 1343 (Count One); conspiracy to commit securities fraud, in violation of 18 U.S.C. §§ 1349 and 1348 (Count Two); and substantive counts of securities fraud, in violation of 18 U.S.C. §§ 1348 and 2 (Counts Three – Ten). *See generally, id.* at ¶¶ 35 – 59.

The Honorable Terry R. Means, to whom this case was initially assigned, entered a Pretrial and Scheduling Order, setting trial for December 6, 2021, and a pretrial conference for December 2, 2021. Dkt. 24 at 1. All parties have heretofore abided by the terms of the Scheduling Order. On November 4, 2021, Judge Means transferred the case to this Court, where it remains. Dkt. 47. To date, the Defendants have not received or have not been able to review the majority of the voluminous discovery from the government.³

As set forth below, the Defendants now respectfully move the Court for an order continuing the December 6, 2021, trial date, and set a status conference, at the Court’s convenience, to set corresponding pretrial schedules and additional pretrial motion deadlines.

II. ARGUMENT AND AUTHORITIES

The Defendants make this request not to unduly delay proceedings, but to ensure that they receive a fair trial and that justice is served. This request comports with the Speedy Trial Act, which provides that a court may grant a continuance where it finds “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 granting a continuance, a court may also consider “[w]hether the case is so *unusual* or so complex...that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the limits established” by 18 U.S.C. § 3161(h)(7)(B)(iv).

³ The government has informed counsel that it will produce multiple terabytes of discovery upon issuance of a protective order. On November 9, 2021, the government notified counsel that the materials may be viewed in the U.S. Attorney’s Office.

(emphasis added). In fact, here the parties agree that the case is sufficiently unusual and complex and should be so designated.

Consequently, the ends of justice achieved by granting a continuance outweigh the best interests of the public and the Defendants in a speedy trial. To date, as discussed above and further below, the Defendants have not effectively received discovery from the government, which is expected to be voluminous. Accordingly, the Defendants require additional time to acquire and review the government's discovery, conduct their own investigations based on its contents, and otherwise prepare for trial. *See* 18 U.S.C. § 3161(h)(7)(A); 18 U.S.C. § 3161(h)(7)(B)(i), (iv).

The grant or denial of a continuance is in the sound discretion of the trial court, and “must be decided on a case by case basis in light of the circumstances presented.” *United States v. Uptain*, 531 F.2d 1281, 1285 (5th Cir. 1976). The Fifth Circuit has long held that the quantum of time available for preparation and the availability of discovery from the prosecution are both “highly relevant” factors in assessing whether a continuance is justified. *Id.* at 1286. Here, the unusualness and complexities of *this* case, and the substantial discovery challenges that exist, provide sufficient grounds to show that more time is needed by the Defendants to prepare for trial.

Specifically, the Defendants request a continuance from the December 6, 2021 setting due to the volume of discovery that the government has advised counsel it will produce and the overall complexity and unusualness of this case. First, as stated above, the Defendants anticipate receiving multiple terabytes of Rule 16(a) and other discovery from the government. This is believed to constitute millions of pages of discovery, or in the neighborhood of 1,300 physical filing cabinets of paper.⁴ Accordingly, the discovery provided to defense counsel, once fully made, will be massive, according to the government.

⁴ <https://www.dropbox.com/features/cloud-storage/how-much-is-1tb>: “How much is 1 TB of storage?”

The volume of this discovery and related delay in its production necessitates a trial continuance to ensure that defense counsel has adequate time to review this discovery and effectively prepare for trial. Further, the high discovery volume, in addition to the factual complexities present in this case, means that *Brady* and *Giglio* analyses by defense counsel will take more time than in the typical case. This difficulty is amplified by the fact that most discovery is not yet in defense counsels' hands, despite trial being less than a month away.

Finally, this case is factually and legally complex *and unusual*. It involves multiple complicated lending and property development transactions by UDF and its numerous business partners across Texas that occurred more than 7 years ago. The indictment identifies multiple fund offerings by UDF involving billions of dollars, a host of investors, and numerous financial institutions; complex securities filings made by some of those funds with the Securities and Exchange Commission ("SEC"); and hundreds of residential developments across Northern Texas and Austin. The pretrial motions already filed provide the Court with some of the unusual issues that are manifest and directly present in this case. Moreover, the government has already designated eleven potential expert witnesses in connection with its planned presentation of its case-in-chief. *See* Dkt. 29.

In sum, the case is both unusual and complex, and more time is needed for defense preparation. This fact is a ground for continuance under the Speedy Trial Act. 18 U.S.C. § 3161(h).

III. DEFENDANTS REQUEST THE SETTING OF A STATUS CONFERENCE TO ESTABLISH A CORRESPONDING PRETRIAL TIMETABLE AND SCHEDULE ADDITIONAL PRETRIAL MOTIONS DEADLINES

The Defendants further respectfully request that this Court set this matter for a Status Conference in order to set appropriate pretrial timetables and additional pretrial motion deadlines. Because the Defendants have not yet received discovery in this matter and have been advised it

consists of multiple terabytes of material, Defendants believe that a Status Conference would facilitate the setting of corresponding pretrial schedules and additional pretrial motions deadlines, taking into account Defendants' actual receipt of the discovery.

IV. IDENTIFICATION OF CONFLICTS PURSUANT TO SCHEDULING ORDER

The Pretrial and Scheduling Order entered by Judge Means in this case states that, "Before a party files a motion or the continuance, he shall confer with counsel for all other parties concerning what dates each cannot be available for trial over the ensuing ninety-day period. The party's motion for continuance shall then set out those dates." See Dkt. 24 at ¶ 7. Pursuant to that order, the Defendants and government have conferred and identify the following dates on which each cannot be available for trial:⁵

- Counsel for the government has stated that due to other trial conflicts listed below, the earliest it can try this case is sometime in April 2022:
 - January 11, 2022 – One day matter that cannot be moved;
 - February 8, 2022 to February 18, 2022- *USA v. Eric Kay*, 4:20-CR-269-Y;
 - March 14, 2022 to March 18, 2022- Preplanned vacation;
 - June 3, 2022 to June 8, 2022- Prepaid trip.

- Counsel for Mr. Jester identifies the following conflicts:
 - *United States v. Davila (1), et al.*, Case No. 3:21-CR-383-B, NDTX, Dallas Division, the Honorable Jane Boyle, set January 24, 2021 and expected to take approximately two weeks;
 - *United States v. McAda (5), et al.*, Case No. 4:18-CR-368, SDTX, Houston Division, the Honorable Alfred Bennett, set February 22, 2022 and expected to take approximately four – six weeks;
 - *United States v. Paret (5), et al.*, Case No. 3:18-CR-623-S, NDTX, Dallas Division, the Honorable Karen Scholer, set March 31, 2022 and expected to take approximately five – six weeks;
 - *United States v. Schneider (3), et al.*, Case No. 3:20-CR-002-

⁵ The identified conflicts cover through the June 2022 time period.

X, NDTX, Dallas Division, the Honorable Brantley Starr, set May 23, 2022 and expected to take approximately three – four weeks.

Based on the foregoing schedules, Defendants request that the Court vacate the current trial setting (and corresponding deadlines) and continue this case, subject to the April 2022 trial conflict identified by counsel for Mr. Jester above and as noted below, to a date in April 2022 or as otherwise amenable to the Court's docket.⁶

V. **CONCLUSION**

For the foregoing reasons, the ends of justice served by a continuance outweigh the best interest of the public and Defendants in a December 2021 trial. 18 U.S.C. § 3161(h)(7)(A). Accordingly, the Defendants respectfully request that the Court vacate the current trial setting and corresponding deadlines and continue this case as set forth above. The Defendants also would respectfully request a status conference to set scheduling and additional pretrial motion deadlines.

Dated: November 10, 2021.

Respectfully submitted,

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⁶ This requested setting, which is identified for the Court due to being the earliest available time for the government, is made contingent on the absence of the conflicting trial setting identified above by Mr. Jester's counsel in *United States v. Paret*, set effectively for the month of April 2022.

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CERTIFICATE OF CONFERENCE

This is to certify that Paul Pelletier, counsel for Hollis Greenlaw, conferred with Assistant United States Attorney Tiffany Eggers on November 10, 2021 regarding the instant motion, and the United States of America is unopposed as set forth herein.

/s/ Paul E. Pelletier

Paul E. Pelletier

CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing document was forwarded to all known counsel of record in this cause via the Court's CM/ECF system.

/s/ Paul E. Pelletier

Paul E. Pelletier

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**ORDER GRANTING DEFENDANTS’ UNOPPOSED MOTION FOR
CONTINUANCE OF TRIAL DATE AND REQUEST FOR A STATUS CONFERENCE**

Before the Court is Defendants Hollis Greenlaw, Benjamin Wissink, Cara Obert, and Brandon Jester’s (collectively, the “Defendants”) Unopposed Motion for Continuance of Trial and Request for Status Conference to Set Scheduling and Additional Pretrial Motion Deadlines (Dkt. __), filed November 10, 2021. The Court finds that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendants in a speedy trial, and that failure to grant such a continuance might result in a miscarriage of justice. *See* 18 U.S.C. § 3161(h)(7)(A), (B)(i).

Pursuant to 18 U.S.C. § 3161(h)(7)(A), the Court can grant an “ends of justice” continuance at the request of a defendant or defendant’s attorney if the Court does so on the basis of finding “that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” *Id.* One of the factors the Court may consider in granting an “ends of justice” continuance is “[w]hether the failure to grant such a continuance . . . would deny counsel for the defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.” *Id.* at § 3161(h)(7)(B)(iv). The Court may also consider

“[w]hether 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.” *Id.* at § 3161(h)(7)(B)(iv).

The Court finds that: (1) this case is unusual and complex; (2) the ends of justice served by granting the requested continuance outweigh the best interest of the public and the defendants in a speedy trial; (3) failure to grant a continuance would deny counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence; and (4) failure to grant a continuance of the trial would likely result in a miscarriage of justice.

It is hereby **ORDERED** that the trial of the case is reset from December 6, 2021 and a status conference is set for _____, 2021, at ____ a.m./p.m. It is further **ORDERED** that this matter is designated as complex for purposes of the Speedy Trial Act.

SO ORDERED this ____ day of November, 2021.

HONORABLE REED O’CONNOR
UNITED STATES DISTRICT JUDGE