

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 22-cr-20191-KMW**

UNITED STATES OF AMERICA,

vs.

ANDREW ALTURO FAHIE,

Defendant.

THIRD UNOPPOSED MOTION TO CONTINUE TRIAL DATE

Andrew A. Fahie (“Mr. Fahie”), through his undersigned counsel, hereby files his Third Unopposed Motion to Continue the presently set trial date for the two-week calendar beginning on July 17, 2023. In support, Mr. Fahie states as follows:

1. Mr. Fahie was arrested on April 28, 2022 and charged in a complaint filed in the Southern District of Florida [D.E. 1]. Mr. Fahie had his Initial Appearance the following day, April 29, 2022, before the Honorable Magistrate Judge Jonathan Goodman [D.E. 6].

2. The Government requested pretrial detention as to Mr. Fahie and a hearing on its request was held on May 4, 2022 before the Honorable Magistrate Judge Alicia M. Otazo-Reyes. The Magistrate Judge denied the Government’s request and set conditions of bond. The Government announced its intention to appeal the denial and requested a stay of the conditions of bond, which was entered by the Court. [D.E. 12].

3. The Government timely filed its pretrial detention appeal [D.E. 15] and its Motion to Revoke Bond [D.E. 23].

4. Mr. Fahie was indicted on May 11, 2022 [D.E. 21].

5. The Government’s appeal and motion relating to bond was heard before the Honorable Kathleen M. Williams on May 23, 2022. The Court denied the Government’s Motion

to Revoke Bond, and modified certain terms and conditions of the original bond set by Magistrate Judge Otazo-Reyes [D.E. 33].

6. Mr. Fahie was arraigned before the Honorable Magistrate Judge Jacqueline Becerra on May 25, 2022, at which the Standing Discovery Order was entered. [D.E. 34]. Consequently, the Government was required to produce discovery on or before Wednesday, June 8, 2022.

7. This Court entered its Order Setting Pretrial Schedule and Procedures on May 26, 2022 [D.E. 35].

8. This Court held a *Nebbia* hearing on June 13, 2022 [D.E. 38]. The Government agreed that Mr. Fahie had satisfied the *Nebbia* conditions relating to his bond. Mr. Fahie was released from custody the same day after posting the bond and satisfying all conditions of his bond.

9. During the course of the *Nebbia* hearing, undersigned counsel advised the Court that the Government had not yet provided discovery owing to some unanticipated delays on the part of the Government, but that Mr. Fahie anticipated receiving production in the immediate future. The undersigned additionally advised that she anticipated some request to continue the currently set trial date, and related deadlines, after an initial review of the size and scope of the Government's production.

10. The Government's initial production was received on Friday, June 17, 2022. Continuous efforts were undertaken to download and copy the discovery materials so that Mr. Fahie might review the discovery. The process relating to production from the Government was completed on or about June 22, 2022.

11. A forensic image of Mr. Fahie's phone was not provided in the initial tranche of discovery. The undersigned requested a forensic image of Mr. Fahie's electronic devices in late July, 2022. The Government experienced technical difficulties in producing the forensic images which were ultimately provided in mid-August 2022.

12. The Government has been in the process of transcribing the voluminous audio recordings in this matter and provided updated transcripts on June 9, 2023.

13. The review of the updated transcripts, including the multi-terabyte quantity of materials initially produced by the Government, revealed that there was no production of *Giglio*, *Napue*, or related information regarding the confidential source used in this case. It should be noted that the Government previously provided, informally, certain payments received by the confidential source used in the case.

14. On August 3, 2022, the Government moved for a protective order, under seal, relating to the identity of the confidential source. [D.E. 54] (the “**Protective Order**”). While Mr. Fahie initially noted his objection to the relief sought therein, the undersigned notified the Government on August 15, 2022 that Mr. Fahie was withdrawing its objection, while expressly reserving the fight to raise it again in advance of the deadline sought by the Government if circumstances warranted. The Protective Order eventually entered allowed the Government to delay providing the identity of the CS to the defendants until thirty (30) days before trial, or June 16, 2023.

15. Subsequent investigation provided the undersigned to make a good faith request for Specific *Brady/Giglio* information regarding the confidential source, including but not limited to verification of the identity of the source. That request was made to the Government on October 13, 2022. The Government responded to the undersigned’s request on October 26, 2022 and declined to provide the undersigned with the identity of the confidential informant, nor other related information sought in the request.

16. On November 9, 2022, the Government obtained a Superseding Indictment in this case. As relevant to Mr. Fahie, the Superseding Indictment adds a single additional count relating to interstate and foreign travel. [D.E. 61].

17. Owing to the Government's refusal to confirm, or refute, the identity of the confidential source, Mr. Fahie filed his Unopposed Motion to Continue the Trial Date [D.E. 68] and on December 6, 2022, the Court entered its order granting the Motion to Continue resetting the trial in this matter for the two-week trial period beginning July 17, 2023. [D.E.69].

18. Thereafter, on February 1, 2023, Mr. Fahie filed his Sealed Motion for Production and Inspection of Brady and Giglio Material requesting an order directing the Government to respond to Mr. Fahie's repeated requests for exculpatory and impeachment information related to the confidential source. [D.E. 79].

19. On February 10, 2023, the Government filed its Response to Mr. Fahie's Sealed Motion and once again declined to provide any of the requested information. [D.E. 82]. Mr. Fahie filed his Reply on February 16, 2023. [D.E. 83].

20. This Court held a hearing on Mr. Fahie's Sealed Motion and the Government's Response on March 10, 2023.

21. Subsequently on April 27, 2023, the Court heard Mr. Fahie's supporting arguments in a sealed *ex parte* meeting. The Government also prepared *ex parte* submissions to the Court concerning the disclosure issue.

22. The Sealed Motion and the Response and Reply thereto have not been resolved as of the date of this Motion, and the June 16, 2023 deadline for the Government to provide the requested information has passed under the terms of the Protective Order.

23. On June 12, 2023, co-defendants Kadeem Stephan Maynard and Oleanvine Pickering Maynard changed their pleas to plead guilty to Count 1 of the Superseding Indictment. [See D.E. 101, 102].

24. Undersigned counsel has conferred with counsel for the Government, and it anticipates being in a position to provide *Giglio, Napue*, and other discovery relating to the

Maynards in two (2) weeks.

25. The Government has not yet disclosed the identity of the confidential source. As previously noted, Mr. Fahie contends that he needs the information in order to file certain pre-trial motions. The Court, without objection from the Government, previously ruled that such motions could be made anytime before trial.

26. As a practical matter, however, there is not sufficient time to file the motions, permit the Government's response and any reply and give the Court time to consider the matter and/or have an evidentiary hearing. The undersigned and Government counsel have had preliminary discussions relating to timing, and the undersigned is authorized to represent that, although the Government disagrees with the merits of Mr. Fahie's pre-trial motions and the need for an evidentiary hearing, the Government agrees that the presently set trial date will not accommodate filings relating to the pretrial issues identified by Mr. Fahie.

27. The undersigned is authorized to represent for the Government that it awaits the Court's order before it will disclose the identity of the confidential source and that it has not yet decided whether it will call the confidential source as a witness.

28. For these several reasons, the undersigned does not have adequate time to prepare for a trial in this case in mid-July 2023, nor to address any pretrial filings until the Government completes its discovery obligations and until such time as the Court may rule on the pending filings relating to the identity of the confidential informant.

29. Considering the foregoing, Mr. Fahie requests that the Court continue the presently set trial date and reset this matter no sooner than Nov. 1, 2023 and further that it reset all currently

set pretrial deadlines.¹

30. The undersigned has explained Mr. Fahie's rights to a Speedy Trial as guaranteed by the Sixth Amendment to the Constitution of the United States and the Speedy Trial Act. Mr. Fahie knowingly agrees to the request sought herein and agrees that any time generated by the requested continuance is properly deemed excludable time under the provisions of the Speedy Trial Act and waives any rights to a Speedy Trial consistent with the relief requested herein. Title 18 U.S.C. §3161(h).

[Intentionally Left Blank]

¹ The undersigned is unavailable from mid-August through mid-September. Government counsel have advised that they are unavailable from mid-September through mid-October.

31. The undersigned is authorized to represent that the Government does not object to the relief requested herein.

Respectfully submitted,

VENABLE LLP

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By: /s/ Theresa M.B. Van Vliet
Theresa M.B. Van Vliet, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been served upon all parties registered to receive electronic notice via CM/ECF Notification on this 20th day of June, 2023.

By: /s/ Theresa M.B. Van Vliet