

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
United States Magistrate Judge Gordon P. Gallagher**

Criminal Action No. \_\_\_\_-cr-\_\_\_\_CMA-GPG

UNITED STATES OF AMERICA,

Plaintiff,

v.

XXX,

Defendant(s).

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**GRAND JUNCTION SPECIFIC SETTING AND TRIAL PREPARATION ORDER FOR  
CRIMINAL ACTIONS FALLING WITHIN THE WESTERN SLOPE PROTOCOL**

- I. **ORDERS APPLICABLE TO ALL GRAND JUNCTION PROTOCOL CASES**
  - II. **ADDITIONAL ORDERS APPLICABLE TO MULTI-DEFENDANT GRAND  
JUNCTION PROTOCOL CASES**
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**I. ORDERS APPLICABLE TO ALL GRAND JUNCTION PROTOCOL CASES**

THIS MATTER has already come before the Court for setting of trial and pretrial deadlines. The Court has addressed deadlines applicable pursuant to the Speedy Trial Act (18 U.S.C. §3161, *et. seq.*) and this Order is issued in accordance with the Speedy Trial Act and the Local Rules of the United States District Court for the District of Colorado. This Order may not be modified by agreement of the parties. Upon timely application, however, either or both parties may seek modification as may be necessary to meet a *bona fide* emergency, to avoid irreparable injury or harm, or as may otherwise be necessary to do substantial justice.

During the COVID-19 pandemic, Grand Junction criminal matters will be heard by Judge Arguello in Courtroom A602 via video teleconference. Following the resolution of the COVID-19 pandemic, hearings and trials on Grand Junction criminal matters will take place in Grand Junction at the Wayne Aspinall Federal Building.

**A. TRIAL AND MOTIONS SETTING**

1. The initial trial setting in this matter is for a trial to a jury of twelve, plus alternates, in the United States District Court for the District of Colorado, Wayne Aspinall Courthouse, Room 323, in Grand Junction, Colorado.
2. All pre-trial motions shall be filed and briefed on the schedule set by the Court and shall comply with Judge Christine M. Arguello's Criminal Practice Standards. Absent a specific directive to the contrary, responses to all other motions in this case shall be filed within seven days of the motion's filing.

3. **Disclosure or Discovery Motions.** The Court will strike any motion related to the disclosure or production of discovery that is addressed by the discovery order and/or Federal Rule of Criminal Procedure 16, unless counsel for the moving party, prior to filing the motion, has conferred or made reasonable, good-faith efforts to confer with opposing counsel in an effort to attempt to resolve the disputed matter, e.g., questions or disputes relating to the scope and/or timing of disclosure of such discovery. If the parties are able to resolve the dispute, the motion shall be entitled “Unopposed Motion for ,” and the parties shall submit via email to Chambers the proposed order that the parties wish the Court to enter. If the parties are unable to resolve the dispute, the moving party shall state in the motion the specific efforts that were taken to comply with this duty to confer.

4. A request for a *James* determination shall be made through a jointly filed motion accompanied by a completed chart in conformance with Exhibit A attached hereto. Absent extraordinary circumstances, the determination will be made on the papers and without a hearing. The Court will issue a written advisory ruling, premised upon the assumption that all identified evidence as to the alleged conspiracy is admitted at trial and a proffer of the identified statements pursuant to Fed.R.Evid. 801(d)(2)(E) is made.

## **B. PLEA AGREEMENTS**

Local Rule D.C.COLO.LCrR 11.1 is applicable in this matter. Absent Court Order, a Notice of Disposition shall be filed no later than 14 days before the trial date. A disposition is defined as the final settlement of a matter. Therefore, if you file a notice

of disposition in a case, you are representing to the Court that (i) defense counsel and Government counsel have reached a **FINAL agreement** on **ALL** of the terms of the plea agreement; **AND** (ii) the defendant has agreed to those terms. If this is not the case, then **DO NOT** file a notice of disposition because that could be considered a violation of Colorado Rule of Professional Conduct 3.3, “Candor Toward the Tribunal.”

At the Change of Plea Hearing, the original of the Plea Agreement and Statement in Advance should be marked as exhibits. If an Information is to be proffered, it should be marked as well, together with a Waiver of Indictment form.

1. **Setting of Change of Plea Hearings.** Upon the filing of a Notice of Disposition, the Change of Plea hearing will be set and presided over by Magistrate Judge Gordon P. Gallagher. Until the resolution of the COVID-19 pandemic, COP hearings will be held via video teleconference. Once the COVID-19 pandemic is resolved, COP hearings will be held in Grand Junction at the Wayne Aspinall Federal Building. The Final Trial Preparation Conference and the trial dates will **NOT** be vacated until the defendant’s plea is entered.

2. **Setting of Sentencing Hearings.** At the Change of Plea Hearing, the Magistrate Judge will set the date of the Sentencing Hearing. The Sentencing Hearing will generally be set approximately 12 weeks after the Change of Plea Hearing. Sentencing-related motions or statements must be filed no later than 14 days before the sentencing hearing. Responses or objections to the opposing party’s filings **MUST** be filed no later than seven days before the scheduled Sentencing Hearing. Additionally,

failure to file a response to the opposing party's sentencing statement or motion(s) will be construed as a concession of the relief requested by the opposing party.

### **C. ENDS OF JUSTICE CONTINUANCES**

1. All motions for an ends of justice continuance must:
  - a) specify the numbers of days remaining on the speedy trial clock;
  - b) specify the number of days the party is seeking to exclude;
  - c) identify which parties join in the motion and which parties object to the motion;and
  - d) provide an analysis of the factors set forth in 18 U.S.C. § 3161(h)(7)(B). The Court encourages counsel to closely examine the continuance factors set forth in 18 U.S.C. § 3161(h)(7)(B) and to specifically address how the ends of justice are served by granting the continuance. In *United States v. Toombs*, 574 F.3d 1262, 1271–72 (10th Cir. 2009), the Tenth Circuit explained that “the record, which includes the oral and written statements of both the district court and the moving party, must contain an explanation of why the mere occurrence of the event identified by the party as necessitating the continuance results in the need for additional time.” It also held that a “record consisting of only short, conclusory statements lacking in detail is insufficient. For example, it is insufficient to merely state that counsel is new and thus needs more time to adequately prepare for trial or that counsel or witnesses will be out of town in the weeks preceding trial and therefore more time is needed to prepare for trial. Simply identifying an event and adding the conclusory statement that the event requires more time for counsel to prepare, is not enough.” *Id.*

2. Any party who objects to the granting of an ends of justice continuance must file his/her/its objection within 7 days of the filing of the motion.

**D. TRIAL PREPARATION REQUIREMENTS – See CMA Criminal Practice Standards.**

### **ADDITIONAL ORDERS APPLICABLE ONLY TO MULTI-DEFENDANT CASES**

It is the Court's experience that multi-Defendant criminal cases often present unusual and significant administrative challenges for both counsel and the Court. In an attempt to preemptively alleviate some of those burdens, and to expressly advise counsel of procedures that the Court will follow, the following procedures will apply to all cases with more than one Defendant.

1. The Magistrate Judge determines speedy trial issues, set pretrial deadlines, recommendations with regard to pretrial motions, or give advisements under Fed.R.Crim.P. 11 in the context of a change of plea only in situations where all Defendants in the case have given consent. In the absence of complete consent, all such matters involving any Defendant (consenting or not) will be heard by Judge Arguello.

2. Case captions shall comply with the form set out in D.C.COLO.LcivR 1.2. Captions should reflect ONLY the defendant or defendants to which the pleading concerns, i.e., **DO NOT LIST ALL DEFENDANTS IN THE CAPTION UNLESS THE MOTION PERTAINS TO ALL DEFENDANTS**. Failure to use the correct form of a caption may result on the pleading being summarily stricken.

3. If a Defendant files a Notice of Disposition, that Defendant and his or her counsel are excused from participating in all subsequent hearings except for hearings which pertain to that Defendant, *i.e.*, change of plea and sentencing hearings.

4. If counsel for a Defendant is unable to attend a hearing, that Defendant may file a motion to allow substitute counsel to represent him or her at such hearing. Such motion must be accompanied by a statement that the Defendant consents to representation by substitute counsel at the particular hearing.

5. Except as may otherwise be directed by the Court, any Defendant who has not filed a Notice of Disposition shall attend all scheduled hearings (apart from change of plea or sentencing hearings for co-Defendants who have filed Notices of Disposition) with his or her counsel. If any Defendant or defense counsel desires to waive his or her appearance at any hearing, an appropriate motion shall be filed no later than 3 business days prior to the hearing.

6. With regard to any Defendant who is not in custody, a motion seeking leave to allow the Defendant to travel shall be filed at least 5 business days before the requested travel date. No such motion will be granted unless the pre-trial supervision office is in agreement and either (a) the Government files written assent to the travel at least 2 business days before the requested travel date or (b) the motion is stipulated.

7. If a Defendant wishes to adopt the arguments made in a co-Defendant's motion, the Defendant shall not file a "Motion to Join" in the co-Defendant's motion. Instead, the Defendant should file a motion whose caption and body identifies the specific relief requested, and which simply incorporates by reference the arguments raised by the co-

Defendant's motion (identifying the motion being incorporated by docket number wherever possible). Alternatively, where it is possible for counsel to collaborate in drafting, a single motion seeking relief on behalf of multiple Defendants is helpful in minimizing docket sheet congestion.

8. At any hearing on motions, counsel shall be responsible for monitoring the disposition of their own motions. Please note their docket numbers. If a motion is not addressed by the Court at the hearing, and counsel do not request a ruling on the motion, the motion may be deemed denied as abandoned.

9. Please be aware of the Court's specific procedures on the following points:

- a) **James proffers.** The Court does not typically conduct hearings on requests for *James* determinations of the admissibility of co-conspirator statements. When a *James* issue is raised, the Government shall make a written proffer containing:
  - i. identification of the facts showing the existence, composition, scope, and object of the conspiracy; and
  - ii. a specific identification of each statement that is to be offered, its declarant, and an explanation as to how that statement is admissible under Fed.R.Evid. 801(d)(2).

This proffer is made on the form attached to this Order. The form also includes a place to state the nature of such objection. Upon its review of a completed proffer, the Court will usually issue a written ruling either: (i) finding the proffer to be *prima facie* adequate to permit the admission of the



co-conspirator testimony under Rule 801(d)(2), subject to the Government establishing the necessary foundational facts at trial; or (ii) finding that specific statements are inadmissible under Rule 801(d)(2).

- b) **Rule 702 issues.** A party's disclosure of expert opinions under Fed.R.Crim.P. 16 shall sufficiently identify the foundational facts necessary to support the expert's opinion under Fed.R.Evid. 702. Challenges to the foundation of a designated expert's opinion on the grounds specified in Rule 702 must be made by a joint filing according to the procedure set forth on the Court's website.

Dated this 5<sup>th</sup> day of February 2021

By the Court:

A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line and a small flourish.

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Gordon P. Gallagher  
United States Magistrate Judge

PROFFER UNDER FED. R. EVID. 801(d)(2) AND OBJECTIONS

SECTION 1: Government's Initial Proffer as to Conspiracy

[The Government's proffer of facts showing that (1) a conspiracy or conspiracies existed, (2) the declarant of each statement and the defendant(s) were members of the conspiracy or conspiracies, and (3) the statements were made in the course of, and in furtherance of, the conspiracy or conspiracies.]

SECTION 2: Government's Proffer as to Specific Statements

Statement #1	Declarant	Date	Source	Basis for Admission
[verbatim recitation of statement or best possible paraphrase]	[name]	[when statement made]	[source of statement – e.g. interview with agent, intercepted phone call, etc.]	[additional explanation, if necessary, why the statement is admissible under Rule 801(d)(2)]

Defendant	Objections to Statement #1
[name]	[e.g. statement made outside scope of conspiracy, statement pre-/post-dates conspiracy, etc.]
[name]	

Statement #2	Declarant	Date	Source	Basis for Admission

Defendant	Objections to Statement #2