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1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 -----x5 UNITED STATES OF AMERICA, New York, N.Y.  
6 v. 19 Cr. 830 (AT)7 TOVA NOEL and MICHAEL THOMAS,  
8 Defendant.  
9 -----x

10 Conference

11 January 30, 2020  
12 11:00 a.m.

13 Before:

14 HON. ANALISA TORRES,  
15  
16 District Judge17 APPEARANCES  
1819 GEOFFREY S. BERMAN  
20 United States Attorney for the  
21 Southern District of New York  
22 BY: JESSICA R. LONERGAN  
23 NICOLAS T. LANDSMAN-ROOS  
24 REBEKAH A. DONALESKI  
25 Assistant United States AttorneysFOY & SEPLOWITZ, LLC  
Attorney for Defendant Noel  
BY: JASON E. FOY  
ERIC SAGARRALAW OFFICES OF MONTELL FIGGINS  
Attorney for Defendant Thomas  
BY: MONTELL FIGGINS

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1 (Case called)

2 THE COURT: Good morning. We are here in the matter  
3 of the United States v. Tova Noel and Michael Thomas.

4 Would you make your appearance, please.

5 MS. LONERGAN: For the government, Jessica Lonergan.  
6 With me at counsel table are my colleagues Nicholas Roos and  
7 Rebekah Donaleski. Good morning, your Honor.8 MR. FOY: May it please the court, your Honor, Jason  
9 Foy, for Ms. Tova Noel, standing to my right. Also with me at  
10 counsel table is associate counsel Eric Sagara. Good morning,  
11 your Honor.

12 MR. SAGARA: Good morning, your Honor.

13 MR. FIGGINS: Good morning your Honor. Montell  
14 Figgins on behalf of Michael Thomas, representing my client,  
15 who stands to my right.16 THE COURT: I understand that the defense is  
17 requesting that I adjourn the trial because of the volume of  
18 discovery. I will hear you on that.19 MR. FOY: Yes, your Honor. We are asking that the  
20 trial date of April 20, 2020, be moved to sometime in October  
21 or a date thereafter that's convenient to the court. The  
22 reason for the request is because it is necessary in order to  
23 provide an adequate and effective assistance of counsel. Why?  
24 Yes, because of the voluminous discovery. But also because of  
25 the amount of time it is going to take for us to conduct our

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1 own investigation, which can't really fully get started until  
2 we appreciate what information has already been provided.

3 That's really the crux of the reason.

4 Now, I noted in the government's opposition, although  
5 they agree that some adjournment is warranted, I guess the  
6 issue is of how long the adjournment should be. The defense is  
7 in the best position to assess how much time we need to perform  
8 our important function on behalf of our clients. I say that  
9 because we are not making a request for the purpose of simply  
10 delaying the proceedings. We are doing it because it is  
11 actually necessary to accomplish our goals as counsel.

12 Also, which I did not reference in my letter, is it  
13 also takes into account my trial schedule, at least why my  
14 request was. Last week, I was scheduled to start a trial  
15 before Judge Ramos in 40 Foley Square in July. And part of  
16 what I discussed with Judge Ramos in setting that trial date  
17 was that I knew that this trial may need to be accommodated in  
18 some way. He selected July 20 for that date mostly because of  
19 the court's availability at that time. That's also part of the  
20 reason. And in that particular case, my client's been  
21 incarcerated for almost two years. He is facing a mandatory  
22 life sentence. So I do need to spend some of my time getting  
23 ready for that as well, and I expect that to be our trial date.

24 THE COURT: What's the date?

25 MR. FOY: What's the date?

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1                   THE COURT: In July.

2                   MR. FOY: July 20 for that trial.

3                   So really it's so we can perform our functions, and of  
4 course there are other things going on as far as  
5 responsibilities, and that would give us sufficient time to be  
6 ready. It is not an unreasonable request. To say a case that  
7 started on November 19, 2019, to be tried in less than a year I  
8 don't think is an unusual circumstance. I don't think anyone  
9 can say it is delayed justice. My client, who is free, she is  
10 not incarcerated, so we don't have any of the interests of an  
11 incarcerated defendant who wants to get a speedy trial. It is  
12 necessary, not an option, not just something we just feel like.  
13 This isn't about us laying back, taking our time. It's about  
14 doing a diligent job. In order to do that, we do need the  
15 time, and I would ask that you grant the request.

16                  THE COURT: How long is the Judge Ramos trial?

17                  MR. FOY: The government represented that they expect  
18 it to be about two weeks.

19                  THE COURT: Starting on July 20 you said, yes?

20                  MR. FOY: That's correct.

21                  MR. FIGGINS: Your Honor, I also join in the motion.  
22 The court has had a chance to read my letter with respect to  
23 requesting an adjournment. It is very early for us at this  
24 point even to have a full appreciation as to what's going to  
25 happen in this matter. I have only had the discovery for

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1 approximately two weeks. It's going to take -- I think there  
2 was at least 25 witness statements that we not only need to  
3 review, but then we need to try and follow up and maybe contact  
4 those witnesses. There are some people who were incarcerated,  
5 may have been released. There are numerous things that must be  
6 done in terms of at least us tracking down specific details  
7 that our clients are demanding that we do in their defense.

8 It took the federal government 90 days to investigate  
9 this case and to come up with an indictment. Accordingly, a  
10 law firm with one or two attorneys, without the resources of  
11 all the federal agencies, it is going to take us more than 90  
12 days to do the same amount of work. So I don't think that it  
13 is an unreasonable request.

14 Not to mention, I believe that if the court were not  
15 to grant some type of an adjournment, we are going to find  
16 ourselves back here again, but the defense will just be in a  
17 better position to give you more specifics as to why we need  
18 more time á la maybe we can't track down this witness or we  
19 spoke to this witness and now we have to find another one.  
20 There are numerous things like that that I think would come  
21 about, and that's why we would try and suggest to give the  
22 court a bird's eye view of that early on, so that maybe we can  
23 delay -- or avoid having to come back repeatedly just to make  
24 those additional requests.

25 Additionally, your Honor, I do believe that there is a

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1 high likelihood that I'm going to file a motion to dismiss the  
2 indictment based on selective prosecution. I do believe that  
3 if certain portions of that motion are granted, then that's  
4 going to entitle the defense to additional discovery that we  
5 haven't even received yet.

6 So with the request that we are asking for, we are  
7 also having an opportunity to kind of see -- I know kind of the  
8 things that are going to happen or potentially will happen, so  
9 instead of just trying to come back here three or four times to  
10 say this is happening, we can kind of just do this now and  
11 realize that that motion will probably be filed. That may  
12 create other issues with respect to discovery.

13 Also, your Honor, I have also made a specific request  
14 under Rule 16 that the defense wants whatever investigation was  
15 done and whatever information there is that is discoverable  
16 with respect to the Inspector General's report. It is my  
17 position that we are entitled to that information. It is an  
18 investigation of the same incident. It is an investigation of  
19 the circumstances with which my client is being charged. With  
20 that being said, I do think that we are entitled to whatever  
21 information was generated in those reports, so I believe that  
22 also is going to cause a delay in the trial wherever we go with  
23 that issue.

24 THE COURT: We already addressed that the last time.

25 (Pause)

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1                   THE COURT: I will hear from the government.

2                   MS. LONERGAN: Yes, your Honor. As we put in our  
3 written submission to the court, we agree that a brief  
4 adjournment is appropriate, but we do not think that a  
5 six-month adjournment is necessary or warranted.

6                   First, the amount of discovery in this case is not  
7 particularly voluminous nor complex in light of the cases tried  
8 in this district; and, in addition, the further investigation,  
9 I want to focus the court on the facts that are going to be at  
10 issue in this trial occurred over a 14-hour period. It is true  
11 that, as part of our discovery, we provided information outside  
12 of that 14-hour period, anticipating many of the types of  
13 requests that the defense counsel has already begun to make.  
14 But again, your Honor, this is a very focused, single-incident  
15 indictment that is about what happened over the period of 14  
16 hours. A much larger investigation about, for example, the  
17 working conditions at the MCC, it is just not relevant to what  
18 is going to be the issues on trial here.

19                   I want to also touch on something that plaintiff said  
20 about the need to interview witnesses. As we explained to the  
21 court, we have done something that's unusual here, which is  
22 that we have provided witness statements with our initial  
23 discovery almost four months in advance of trial. As the court  
24 is aware, we typically provide what we call 3500 material much  
25 closer to trial. So the need to review those witness

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1 statements and interview additional -- interview those  
2 witnesses, that can't possibly weigh in favor of an adjournment  
3 when in fact the defense counsel has so much more time with  
4 those materials than they would in a typical trial schedule  
5 where they might have those materials just a few weeks before  
6 trial, your Honor.

7 So for those reasons, we think that we are hard  
8 pressed to identify areas of additional investigation that  
9 would touch on the 14-hour time period that is going to be at  
10 issue in this trial; and so, for those reasons, while we agree  
11 that a short adjournment is warranted, that six months is not  
12 required. We do understand of course that that may be  
13 difficult with Mr. Foy's trial schedule with having the July  
14 trial, but it seems like there may be a possibility of putting  
15 this trial before Mr. Foy's July trial and still giving him  
16 sufficient time to prepare for both.

17 THE COURT: And how long do you expect this trial to  
18 go?

19 MS. LONERGAN: Your Honor, if this trial is confined  
20 to that 14-hour time period, setting aside jury selection, I  
21 can't imagine it lasting more than a week.

22 THE COURT: Okay. The trial is set for June 8.

23 With respect to the motion to dismiss, the motion is  
24 due on March 9, opposition is due by April 6, and the reply is  
25 due on April 20.

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1                   Are there any further applications?

2                   MR. FIGGINS: Yes, your Honor. You said we dealt with  
3 the issue with respect to the Investigator General's report.  
4 This court has never addressed it at all. You never said  
5 anything with respect to that. So I just want to make that  
6 clear. Do I need to file a motion with respect to that?

7                   THE COURT: You may file a formal motion.

8                   MR. FIGGINS: Thank you.

9                   THE COURT: Anything further?

10                  MR. FIGGINS: Your Honor, can I have an additional two  
11 weeks? Can we push the motion schedule back at least an  
12 additional two weeks? Because I have my 80-something-year-old  
13 relative coming to visit me from February 23 through March 1,  
14 so I kind of won't be working during that time. So if you  
15 could just make it like -- if you could make it something  
16 around like the 18th or the 21st.

17                  THE COURT: All right, then. You can file your motion  
18 by March 20.

19                  How long does the prosecution need to oppose?

20                  MS. LONERGAN: Your Honor, three weeks, please.

21                  THE COURT: So the prosecution will file opposition on  
22 April 10, and the reply will be April 24.

23                  Is there anything further?

24                  MS. LONERGAN: Yes, your Honor, at this time the  
25 government moves to exclude time between now and the trial

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1 date, which has now been set for June 8, for the following  
2 reasons:

3 It will allow the parties to discuss potential  
4 pretrial dispositions, to allow defense counsel to review the  
5 discovery, make and file motions, the court to resolve those  
6 motions, and for the defense counsel to conduct the additional  
7 discovery that they have been discussing today in court.

8 MR. FOY: Your Honor, I don't oppose the government's  
9 position.

10 I wanted to just go back to one thing. I understand  
11 you have ruled. I accept that it is June 8. Hopefully there  
12 are no delays because I anticipate being out of the country --  
13 we haven't set a specific date, but I'm traveling with family  
14 at the end of June. So if there is any delay, that could be an  
15 issue.

16 THE COURT: You are talking about leisure travel?

17 MR. FOY: Well, leisure. My family, first-priority  
18 travel. That's what it is. So I don't know if it's just  
19 leisure. It is not business, but it is the business of having  
20 family business.

21 THE COURT: Well, you should work your family schedule  
22 around your professional obligations, counsel.

23 MR. FOY: Well, if there is a delay in the  
24 professional schedule of trial, because it is not unusual for  
25 sometimes there to be delays, because if we start a week later

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161 for some reason, then it's going to create a conflict.

172 THE COURT: You will not be starting a week later. We  
183 are starting on the 8th of June.194 MR. FOY: Okay. Here is the issue. The government  
205 has represented to you that this is just about a 14-hour  
216 period. I suspect that, when the trial comes around, that the  
227 only thing that won't come up during the trial is the 14-hour  
238 period, right? Because it's not as if we are not here because  
249 of other things having nothing to do with the defendants in  
2510 this case, and the working conditions at MCC are directly  
2611 related to why things happened in that 14-hour period. The  
2712 years of conduct, the culture of the institution, the failures  
2813 in security measures beyond counts.2914 We have been provided with three videos of the 192  
3015 that exist. In the SHU there are nine video cameras. Only one  
3116 has been produced, and it shows almost nothing. And why that  
3217 is, the circumstances, what it means, is relevant.3318 So maybe it will be a one-week trial. That's  
3419 possible. But what I am trying to avoid is some type of  
3520 conflict that we can see now that -- you know, because, you  
3621 know, I understand professional obligations, but if I had to  
3722 choose between family and my professional obligations, it's --3823 THE COURT: All right. Well, counsel, I am directing  
3924 that you be here on June 8 to start trial.

4025 MR. FOY: I will be here.

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1                   THE COURT: That is my order.

2                   MR. FOY: And I will be here. I just don't want there  
3 to be any delay that creates that issue.

4                   MR. FIGGINS: Your Honor -- sorry to cut you off.

5                   Your Honor, I'm thankful Mr. Foy said that about the  
6 family vacation. I am actually going to be in Italy on a  
7 cruise June 1 through June 14. We fly back on the 15th of  
8 June.

9                   THE COURT: And you just forgot about it?

10                  MR. FIGGINS: Your Honor, I don't keep my social  
11 calendar. Luckily he said that and I realized that in June we  
12 do have a cruise scheduled, and I didn't even know the date, so  
13 I had to find out just now.

14                  THE COURT: When do you return?

15                  MR. FIGGINS: The 15th, and I don't even know what day  
16 of the week that is, but . . .

17                  THE COURT: We will start on the 22nd of June.

18                  MR. FOY: Well, Judge, that's the time I was just  
19 talking to you about. Right? That I'm trying to make  
20 arrangements to travel with my family. Right?

21                  THE COURT: Well, I understand that it is desirable to  
22 have family time, but you also have an obligation to zealously  
23 represent your client, and so we are going to start on the  
24 22nd.

25                  MR. FOY: So I don't understand. I mean, I have no

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1 problem zealously representing my client, and I will do so. If  
2 my daughter is going to be in Italy, ironically, and my wife  
3 and my other daughter are going to travel there at the end of  
4 her program so we can spend time, how is that an issue for us  
5 to take that into consideration in a professional setting?

6 Like, I don't understand.

7 THE COURT: Counsel, you will use Skype. Is there  
8 anything --

9 MR. FOY: No, no, no, no, no, no, no, no.

10 THE COURT: Is there anything further?

11 MR. FOY: I'm not going to use --

12 THE COURT: Counsel, I have heard enough. Is there  
13 anything further?

14 MR. FOY: Well, look, I'm not --

15 THE COURT: Sit down, counsel.

16 MR. FOY: Can I be heard?

17 THE COURT: You will sit down.

18 MR. FOY: And then be heard from the seat?

19 THE COURT: No. You will sit down.

20 Is there anything further unrelated to the vacation  
21 plans --

22 MR. FOY: This is not just vacation, your Honor.

23 THE COURT: Counsel, I have had it. Now, you sit down  
24 and stop --

25 MR. FOY: Before --

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1 THE COURT: -- with this nonsense.

2 MR. FOY: Before I sit down, your Honor --

3 THE COURT: No.

4 MR. FOY: -- you said June 8.

5 THE COURT: Counsel, I have directed --

6 MR. FOY: My co counsel --

7 THE COURT: -- you to sit down.

8 MR. FOY: My co-counsel says --

9 THE COURT: Sit down, counsel.

10 MR. FOY: -- he has vacation and --

11 THE COURT: Sit down.

12 MR. FOY: -- we are going to interrupt --

13 THE COURT: Sit down.

14 MR. FOY: -- my family --

15 THE COURT: Counsel.

16 MR. FOY: -- obligations --

17 THE COURT: Counsel.

18 MR. FOY: -- for a nonviolent --

19 THE COURT: Sit down, counsel.

20 MR. FOY: -- criminal case with no mandatory jail --

21 THE COURT: Counsel, sit down.

22 MR. FOY: -- that's not even --

23 THE COURT: Sit down.

24 MR. FOY: -- based on their conduct?

25 THE COURT: Sit down.

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1 MR. FOY: It's based on what some other man did?

2 THE COURT: Counsel, you don't have a jury here. Stop  
3 performing.

4 MR. FOY: No. I'm not -- there is no jury here. I'm  
5 trying to address the unfairness --

6 THE COURT: Sit down.

7 MR. FOY: -- of proper consideration of a  
8 professional --

9 THE COURT: You are trying my patience, counsel. Sit  
10 down.

11 All right, then. The matter is adjourned.

12 MS. LONERGAN: Your Honor, sorry. We are going to  
13 amend our application to exclude time now until June 22, which  
14 is the date the court has now set for trial for the reasons we  
15 previously stated on the record.

16 THE COURT: The matter is adjourned until June 22.  
17 The time is excluded under the Speedy Trial Act for the reasons  
18 already stated by the prosecution.

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