

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD J. TRUMP,

Defendant.

CRIMINAL NO. 23-cr-257 (TSC)

**BRIEF OF FORMER JUDGES AND SENIOR LEGAL OFFICIALS AS *AMICI CURIAE*
IN SUPPORT OF GOVERNMENT'S PROPOSED TRIAL DATE AND SCHEDULE**

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STATEMENT OF COUNSEL

Pursuant to D.C. District Court Local Rule 7(o)(5) and Fed. R. App. P. 29(a)(4)(c), amici state that none of the parties to the above-captioned dispute, and none of their counsel, authored this Brief in whole or in part or contributed money that was intended to fund preparing or submitting this Brief. No person—other than amici or their counsel—contributed money that was intended to fund the preparing or submitting of this Brief.

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INTEREST OF *AMICI CURIAE*

The criminal prosecution in *United States v. Donald J. Trump* will be an historic trial of a former American president of surpassing public interest to the American People. This trial will present for decision by a jury of the former president's peers the momentous question of whether a President of the United States of America committed grave crimes against the United States when he attempted to overturn the 2020 presidential election by conspiring to defraud the United States of the lawful results of an American election, conspiring to obstruct the Joint Session of the Congress of the United States as it counted the electoral votes for the presidency of the United States, and conspiring to deprive millions of Americans of their constitutional right to have their votes counted. That attempt is further alleged to have precipitated the violent attack on the United States Capitol on January 6, 2021, a vicious and unparalleled attack and assault on the temple of American democracy and on American democracy itself.

Under the Constitution and the laws of the United States, the Nation is entitled to and deserves an expeditious resolution of the criminal prosecution of the former president for his alleged election interference and his prevention of the peaceful transition of power for the first time in American history. That national imperative corresponds with the former president's own constitutional entitlement to a speedy resolution of the grave charges that have now been leveled against him by the United States.

Amici are former judges and attorneys who were appointed by or served as senior legal officials in Republican administrations. They write, on behalf of themselves and on behalf of the American People they were honored to serve, to emphasize the important interest in, and the national necessity for, a fair and expeditious trial in this case of unsurpassed interest to the United States of America and the citizens of the United States.

ARGUMENT

I. The Constitution and Laws of the United States Protect Both the American Public's and the Former President's Right to a Speedy Trial.

The Sixth Amendment to the Constitution protects “the right to a speedy and public trial.” U.S. Const., amend. VI. “The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused” because “there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused.” *Barker v. Wingo*, 407 U.S. 514, 519 (1972). *See also Gannett Co. v. DePasquale*, 443 U.S. 368, 383 (1979) (“[r]ecogni[zing] . . . an independent public interest in the enforcement of Sixth Amendment” right to a speedy trial in order to serve the “public interest in the efficient administration of justice”); *Strunk v. United States*, 412 U.S. 434, 439 (1973) (“The desires or convenience of individuals cannot be controlling. The public interest in a broad sense, as well as the constitutional guarantee, commands prompt disposition of criminal charges.”).

The Speedy Trial Act was similarly “designed with the public interest firmly in mind.” *Zedner v. United States*, 547 U.S. 489, 500 (2006). For that reason, the Act requires that any continuance be exempted from its strict 70-day time limit only if the court 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) (emphasis added). As the Supreme Court has recognized, the Act thus accords the public’s interest great weight in determining whether to exclude time from the speedy trial clock. “If the Act were designed solely to protect a defendant’s right to a speedy trial, it would make sense to allow a defendant to waive the application of the Act. But the Act was designed with the public interest firmly in mind. . . . That public interest cannot be served, the Act recognizes, if defendants may opt out of the Act entirely.” *Zedner*, 547 U.S. at 501. Accordingly, “trial judges are obligated to seriously weigh the benefits of granting the continuance

against the strong public and private interests served by speedy trials.” *United States v. Bryant*, 523 F.3d 349, 361 (D.C. Cir. 2008). *See also United States v. Sanders*, 485 F.3d 654, 659 (D.C. Cir. 2007) (vacating conviction on basis that district court “fail[ed] to meet the Act’s requirement of on-the-record findings that a continuance ‘outweigh[ed] the best interest of the public and the defendant in a speedy trial.’”) (quoting 18 U.S.C. § 3161(h)(8)(A)).

II. Both the Former President’s and the Nation’s Interests Overwhelmingly Favor the Expedious Resolution of this Criminal Prosecution Pursuant to the Government’s Proposed Trial Date and Schedule.

Both the Constitution and the laws of the United States require the expeditious resolution of this criminal prosecution of the former president. This case is unique and of overarching historical significance to the Nation, but it is straightforward in its trial. As it is, the government’s proposed trial date of January 2, 2024, would already extend the statutory period for a speedy trial afforded the former president under the Speedy Trial Act. The government’s proposal is reasonable, and it appropriately accounts for the American public’s interest in a prompt resolution of this profoundly important case. Just as importantly, the government’s proposal respects and serves the former president’s own interest in a speedy trial, consistent with his indisputable due process right to defend himself against the grave charges that have been brought against him by the United States of America.

The implications for the Constitution and for American democracy of a speedy trial of these historic charges against a President of the United States are profound. Indeed, they could not be any more profound. These charges present for decision by a jury of the former president’s peers the most fundamental questions possible under the Constitution of the United States and for the rule of law and American democracy. There is a surpassing public interest in the expeditious resolution of these questions, in order that these questions raised by the former president’s conduct

for which he now stands charged do not continue much longer to cast a dark shadow over America and her democratic system of government and governance.

America's Constitution, her legal and political institutions, and the rule of law itself have been under assault for years now. These attacks escalated to a crescendo on January 6, 2021, culminating on the January 6 assault on the United States Capitol, the temple of our Nation's democracy. There is no more important issue facing America and the American People—and to the very functioning of democracy—than whether the former president is guilty of criminally undermining America's elections and American democracy in order to remain in power notwithstanding that the American people had voted to confer their power upon the former president's successor, President Joseph Biden. Nothing less is at stake than the American experiment in democracy and democratic government that began with our Nation's founding almost two hundred and fifty years ago.

The former president's legitimate constitutional and statutory interests similarly demand a speedy and expeditious trial on his alleged offenses against the United States. The former president maintains his innocence of these grave charges brought against him by the United States. He deserves and is entitled to a speedy trial on these charges in order that he might answer and potentially lay to rest the profoundly consequential questions about his role in the effort to overturn the 2020 presidential election and the January 6 attack on the United States Capitol that obstructed and impeded the Joint Session of Congress from counting the electoral votes for the American presidency. *See Betterman v. Montana*, 578 U.S. 437, 442–43 (2016) (“Regarding the Framers’ comprehension of the right as it existed at the founding, we have cited Sir Edward Coke’s *Institutes of the Laws of England* Coke wrote that ‘the innocent shall not be worn and wasted by long imprisonment, but . . . speedily come to his tria[1].’”) (quoting 1 E. Coke, *Second Part of the*

Institutes of the Laws of England 315 (1797)). And like all criminal defendants, he here bears the “major evils protected against by the speedy trial guarantee”: “Arrest is a public act that may seriously interfere with the defendant’s liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.” *United States v. Marion*, 404 U.S. 307, 320 (1971).

Though the questions presented are profound, the impending trial of the former president on these serious offenses should be straightforward, presenting little just cause for delay beyond the government’s proposed schedule and trial date. The events leading up to January 6, and the tragedy of January 6 itself, played out in real time on national television before the witnessing American public. The circumstances that culminated in that attack have been revealed in the two and a half years since January 6, 2021, most notably during the historic “Hearings on the January 6 Attack on the United States Capitol” last summer in the House of Representatives.

The former president is the lone defendant in this trial for the offenses leading up to and arising out of the events of January 6. The trial will involve at most a “minimal amount of classified information,” and “one of the defendant’s attorneys of record already possesses an interim clearance to review certain [of that] classified discovery.” Gov’t Mot. for a Pretrial Conf. Pursuant to the Classified Information Procedures Act (ECF 25), at 3. Moreover, the government has confirmed that it will accelerate its discovery obligations to further assist the former president in the mounting of his defense. *See* Gov’t Response to Court’s Aug. 3, 2023 Minute Order (ECF 23), at 5 (“The Government is prepared at this moment to produce to the defendant the majority of discovery in this case, including materials that exceed its obligations.”).

Accordingly, based on the extensive experience of amici, a speedy trial on the schedule proposed by the United States government appears both practicable and to satisfy the former president's constitutional and statutory right to a speedy trial. The former president is entitled to this speedy trial as a matter of law. He is not entitled to an unjust delay in his trial to serve his purely personal and political interests in the delay of his trial. Such a delay would offend the constitutional and statutory right afforded the former president and frustrate the public interest afforded the American people under the Constitution and laws of the United States.

This trial does not present questions of law that cannot be resolved in the time allocated. The indictment conspicuously avoided charges against the former president that would have presented difficult, even if not novel, questions. The statutory offenses charged in the indictment have previously been prosecuted countless times against other defendants, including hundreds of times for crimes related to the obstruction of the electoral count on January 6, 2021. Both the District of Columbia Circuit and at least fourteen federal district court judges in this district have upheld those convictions. *See United States v. Fischer*, No. 22-3038 (D.C. Cir. April 7, 2023) (upholding convictions of January 6 defendants under 18 U.S.C. § 1512(c)(2)). *See also, e.g., United States v. Gillespie*, No. 1:22-cr-60, 2022 WL 17262218 (D.D.C. Nov. 29, 2022) (Howell, J.); *United States v. Hale-Cusanelli*, No. 21-cr-37, 2022 WL 4300000 (D.D.C. Sept. 19, 2022) (McFadden, J.); *United States v. Robertson*, 610 F. Supp. 3d 229 (D.D.C. 2022) (Cooper, J.); *United States v. Williams*, No. 21-cr-618, 2022 WL 223730 (D.D.C. June 22, 2022) (Berman Jackson, J.); *United States v. Fitzsimons*, 605 F. Supp. 3d 132 (D.D.C. 2022) (Contreras, J.); *United States v. Bingert*, 605 F. Supp. 3d 111 (D.D.C. 2022) (Lamberth, J.); *United States v. McHugh*, No. 21-cr-453, 2022 WL 1302880 (D.D.C. May 2, 2022) (Bates, J.); *United States v. Puma*, 596 F. Supp. 3d 90 (D.D.C. 2022) (Friedman, J.); *United States v. Grider*, 585 F. Supp. 3d 21 (D.D.C.

2022) (Kollar-Kotelly, J.); *United States v. Nordean*, 579 F. Supp. 3d 28 (D.D.C. 2021) (Kelly, J.); *United States v. Montgomery*, 578 F. Supp. 3d 54 (D.D.C. 2021) (Moss, J.); *United States v. Mostofsky*, 579 F. Supp. 3d 926 (D.D.C. 2021) (Boasberg, J.); *United States v. Caldwell*, 581 F. Supp. 3d 1 (D.D.C. 2021) (Mehta, J.); *United States v. Sandlin*, 575 F. Supp. 3d 16 (D.D.C. 2021) (Friedrich, J.).

For these reasons, the defenses the former president’s counsel have indicated they may raise on behalf of the former president are unlikely to delay this Court. Notwithstanding his claims to the contrary, it is indisputable that the former president lost the 2020 president election by a vote of the American people and that the incumbent president, Joseph Biden, won that election, as countless authorities have universally concluded. *See, e.g., John Danforth et al., Lost Not Stolen: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election* (July 2022) (comprehensively reviewing cases), <https://lostnotstolen.org/download/378>. Nor does the First Amendment protect the former president’s unlawful scheme to subvert the democratic process of the 2020 presidential election. As Justice Antonin Scalia explained, “[m]any long established criminal proscriptions—such as laws against conspiracy, incitement, and solicitation—criminalize speech (commercial or not) that is intended to induce or commence illegal activities” because such requests are “undeserving of First Amendment protection.” *United States v. Williams*, 553 U.S. 285, 298 (2008).

And any claim that the defendant relied on the advice of counsel in pursuing his course of conduct is of a type that is frequently litigated and can be addressed in the forthcoming trial. *See United States v. West*, 392 F.3d 450, 457 (D.C. Cir. 2004) (“A defendant may avail himself of an advice of counsel defense only where he makes a complete disclosure to counsel, seeks advice as

to the legality of the contemplated action, is advised that the action is legal, and relies on that advice in good faith.”).

As a matter of law, there is no serious question that the Vice President of the United States did not have the power under either the Constitution or the laws of the United States to refuse to count certain of the electoral votes, to recognize the false electoral votes of the defeated candidate, to adjourn or delay the January 6 meeting of Congress, or to refer the election to state legislatures to overturn the lawfully certified choice of their voters. *See Eastman v. Thomson, et al.*, Case No. 8:22-cv00099-DOC-DFM (C.D.C.A. Mar. 28, 2022) (“The illegality of the plan was obvious.”). *See also* Matthew A. Seligman, *The Vice President’s Non-Existent Unilateral Power to Reject Electoral Votes* (Oct. 11, 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3939020. In all events, this Court can accommodate any unexpected or complicated legal issues if and when they arise, because the Speedy Trial Act separately excludes “delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion.” 18 U.S.C. 3161(h)(1)(D). Federal law fully anticipates and accounts for the realities of even this historic case.

The legitimate interests of the former president, the United States government, and the American public overwhelmingly favor proceeding with a prompt trial of the former president in accordance with the government’s proposed schedule and trial date.

* * *

For the first time in American history, a former President of the United States stands charged with grave crimes against the United States of America that he allegedly committed while President. The serious offenses alleged in *United States v. Donald J. Trump* constitute a knife to the heart of America’s democracy and its democratic system of government and governance. The

former president's trial is of transcendent consequence for the Nation. As the eyes of democracies around the world look to America as the continuing proof of democracy's promise, it is important that this prosecution and the trial of the former president be resolved expeditiously, consistent with Constitution and the rule of law. The Constitution and laws of the United States contemplate and provide for nothing less – in recognition of the rights belonging to both the former president and the People of the United States of America.

CONCLUSION

This Court should adopt the government's proposed trial date and schedule, in order that defendant Donald J. Trump and the American people receive the speedy trial to which both are entitled under the Constitution and laws of the United States.

Dated: August 14, 2023
Washington, D.C.

Respectfully submitted,

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The amici listed below join this brief as individuals and do not represent or advise any party in the matter; institutional affiliation is noted for informational purposes only and does not indicate endorsement by institutional employers of the positions advocated in this brief.

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Alberto R. Gonzales served as the 80th Attorney General of the United States from 2005–2007, as White House Counsel from 2001–2005, and as an Associate Justice of the Texas Supreme Court from 1999–2001.

J. Michael Luttig served as a Judge of the United States Court of Appeals for the Fourth Circuit from 1991–2006, as Assistant Attorney General, Office of Legal Counsel and Counselor to the Attorney General from 1990–1991, and as Assistant Counsel to the President, The White House from 1980–1981.

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Stanley A. Twardy, Jr. served as a United States Attorney for the District of Connecticut and Chief of Staff to Connecticut Governor Lowell P. Weicker, Jr.

William F. Weld served as the U.S. Attorney for Massachusetts from 1981 to 1986; as the Assistant U.S. Attorney General in charge of the Criminal Division from 1986 to 1988; and as Governor of Massachusetts from 1991 until 1997.