

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

UNITED STATES OF AMERICA

v.

KRISTOPHER LEE DALLMANN,

DOUGLAS M. COURSON,

FELIPE GARCIA,

JARED EDWARD JAUREQUI,
a/k/a Jared Edwards,

PETER H. HUBER, and

YOANY VAILLANT,
a/k/a Yoany Vaillant Fajardo

Defendants.

Crim. No. 1:19-CR-253

The Honorable T.S. Ellis, III

UNITED STATES' MOTION TO CONTINUE TRIAL DATE

The United States of America, through its attorneys, G. Zachary Terwilliger, U.S. Attorney for the Eastern District of Virginia; Alexander P. Berrang and Monika Moore, Assistant U.S. Attorneys; and Matthew A. Lamberti, Senior Counsel, Computer Crime and Intellectual Property Section, U.S. Department of Justice, hereby respectfully move this Court to vacate the current trial date of February 3, 2020, set a new trial date of June 22, 2020, and continue to exclude from the Speedy Trial Act the time period for commencing trial of the defendants.

BACKGROUND

1. On August 27, 2019, a grand jury in the Eastern District of Virginia returned a multicount indictment against Defendants Kristopher Lee Dallmann, Darryl Julius Polo a/k/a

djppimp, Douglas M. Courson, Felipe Garcia, Jared Edward Jaurequi a/k/a Jared Edwards, Peter H. Huber, Yoany Vaillant a/k/a Yoany Vaillant Fajardo, and Luis Angel Villarino.¹ With respect to Mr. Dallmann, the grand jury charged him with: (a) one count of conspiracy to commit criminal copyright infringement, in violation of 18 U.S.C. § 371; (b) two counts of criminal copyright infringement by reproduction or distribution and aiding and abetting, in violation of 17 U.S.C. §§ 506(a)(1)(A) and 106(1) and (3), as well as 18 U.S.C. § 2319(b)(3) and 2; (c) two counts of criminal copyright infringement by public performance and aiding and abetting, in violation of 17 U.S.C. §§ 506(a)(1)(A) and 106(4), as well as 18 U.S.C. §§ 2319(b)(3) and 2; (d) money laundering and aiding and abetting, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i) and B(i) and 2; and (e) money laundering and aiding and abetting, in violation of 18 U.S.C. §§ 1956(a)(3)(A) and (B) and 2. As for Messrs. Courson, Garcia, Jaurequi, Huber, and Vaillant, the grand jury charged each of them with one count of conspiracy to commit criminal copyright infringement, in violation of 18 U.S.C. § 371.

2. As alleged in the indictment, the defendants helped operate Jetflicks, an online, subscription-based service that permitted users to stream (and, at times, to download) copyrighted works without permission from the copyright owners. On September 25, 2019, Messrs. Huber, Garcia, and Vaillant, together with their respective counsel, made their initial appearance on the charges, and the next day, Messrs. Dallmann, Courson, and Jaurequi, also with their counsel, made their initial appearances. The Honorable Ivan D. Davis released all six

¹ On December 12, 2019, Mr. Polo pleaded guilty to multiple criminal copyright infringement and money laundering charges including the conspiracy count that involves Jetflicks—the same count with which the other seven defendants have been charged. The other counts to which Mr. Polo pleaded guilty concern iStreamItAll, an illegal streaming site that Mr. Polo ran that was similar to Jetflicks. On December 13, 2019, Mr. Villarino also pleaded guilty to the conspiracy count.

defendants on bond.

3. On September 27, 2019, this Court arraigned Messrs. Huber, Garcia, and Vaillant on the charges, and on October 11, 2019, the Court arraigned Messrs. Dallmann, Courson, and Jaurequi. The government requested trial be set within the speedy trial deadline, which it estimated to be December 4, 2019. The defendants, conversely, requested a waiver of the Speedy Trial Act and a continuance of the trial until a date after December 4, 2019. The Court then determined that trial would be set to begin on February 3, 2020, finding that, pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii), this case is so complex due to the number of defendants and the nature of the prosecution that it would be unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by the Speedy Trial Act. Subsequently, the Court also found, pursuant to 18 U.S.C. § 3161(h)(7)(A), that the ends of justice were served by commencing the trial on February 3, 2020, and that in so delaying the trial the ends of justice served outweighed the best interest of the public and the defendants in a speedy trial. As a result, the Court ordered that the period of time from September 27, 2019, to February 3, 2020, would be excluded in computing the time within which the trial must commence under the Speedy Trial Act. Significantly, during the arraignment, we informed the Court that it had a large amount of discovery in its possession (approximately 88 gigabytes), and also noted that, pursuant to a request by the government under the U.S.-Canada Mutual Legal Assistance Treaty (MLAT), Canadian law enforcement had seized an even greater amount of additional evidence related to the case that it planned to produce to the United States at some unknown date.

4. The government now moves for a continuance of the February 3, 2020 trial date because we just received from Canada the additional data discussed at the arraignment—

evidence that we had requested about 21 months ago. Specifically, on March 12, 2018, the United States sent a 30-page request to Canada under the U.S.-Canada MLAT for data stored in Canada related to various domain names and Internet Protocol addresses pertaining to Jetflicks, iStreamItAll, Mr. Dallmann, Rent-a-Geek, and Sincity Geeks.² On December 16, 2019, the Office of International Affairs for the U.S. Department of Justice advised it had received the above-described evidence from Canada.

5. The data that is now in our possession appears to concern Jetflicks, iStreamItAll, and the defendants in this case, and the production is enormous. It is our understanding that the evidence received from Canada consists of the following: (a) a flash drive containing reports from the Royal Canadian Mounted Police; (b) two original certificates of authenticity; (c) a “list of tickets and messages with customer”; (d) reports to a Canadian judge; (e) subscriber information documents; (f) a true copy of the order sending evidence to the United States; and (g) a hard drive containing five forensic images of computers located at OVH, a hosting provider located in Canada.³ The five forensic images total about 2.72 terabytes in size (including deleted/trashed files), and include well over 2.3 million files. Because 1 terabyte is the equivalent of 1,000 gigabytes, the data provided by Canada just on the five forensic images is about 30 times bigger than the discovery that has been provided to the defendants to date.

² The government’s initial discovery production to the defendants included a copy of the MLAT request, and it has been assigned a Bates number of US-1691.

³ The Court may wonder why Jetflicks and iStreamItAll—which were both based in the United States—used a hosting provider in Canada for their operations. According to the International Intellectual Property Alliance (IIPA), which represents over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world, among those engaged in piracy, Canada has had a “long-standing reputation as a safe haven for some of the most massive and flagrant Internet sites dedicated to the online theft of copyright material.” See <https://iipa.org/files/uploads/2019/02/2019SPEC301CANADA.pdf>, at 125. Yet, according to IIPA, in recent years “Canada has made some progress in rectifying” that reputation. *Id.*

6. The Federal Bureau of Investigation took possession of the evidence on December 17, 2019, and delivered it to the Computer Crime and Intellectual Property Section's Cybercrime Lab so that we could gain a sense of nature of the records on the hard drive. After a preliminary survey of the hard drive, it appears that the data includes the following:

- A forensic image with around 2.482 terabytes of files that appear to relate to Jetflicks, ISIA, SmackDownOnYou, Sincity Sports Cards, BoxBustersTV, and other entities and persons involved in the case. Among other things, this image has numerous video files (many of which appear to be television shows), JPEGs/thumbnails, computer scripts in PHP and Perl, and approximately 186,000 emails (some of which include attachments of Excel spreadsheets, Word documents, and other items).⁴
- Four additional forensic images with around 61.4 gigabytes in files that appear to include, among other things, (1) system files; (2) a web server with many JPEGs; (3) data relating to BoxBustersTV and Cardvision.tv; and (4) folders relating to Jetflicks, Sincity Sports Cards, BoxBustersTV, and Deranged Comics, and the contents of these folders appear to include, among other thing, Python scripts for SickRage and Sick Beard.

7. On December 17, 2019, we promptly informed defense counsel about these new records and offered to provide them with a copy as soon as possible once they provided us with a hard drive of suitable size. Moreover, because we have not reviewed the data yet, we advised defense counsel that we will need them to agree to a new protective order that provides for destruction of contraband, in the event that any contraband exists in the data. We also asked for defense counsel's position on a continuance, but to date only Mr. Huber's counsel has responded. Mr. Huber's counsel stated that he is opposed to a continuance, advising that he

⁴ Some of these 186,000 or so emails may be duplicative, and some may also overlap with emails we have already produced in discovery. We are working with our litigation support specialists to make these assessments.

neither sees the need or utility for a delay in the trial.

8. In our view, given that neither the government nor the defense has reviewed the data we just received from Canada, all parties would benefit from a continuance. The government needs to understand the nature of this new evidence for purposes of our case, and we believe that defense counsel has an obligation to their clients to review this new evidence too.

9. We are requesting a continuance of about four months. Such a continuance is needed given the timing of the data's arrival, its size, and the nature of review platforms that the government and some defendants currently are using to review and identify relevant records. We anticipate it will take at least six weeks to load the Canadian data onto our review platform, and we need to coordinate with defense counsel as to how they would like to receive the production.⁵ Several of the defense counsel asked that the initial discovery productions be provided in a "load-ready" format so that it could be inputted into their review platform. However, we have been advised by our litigation support specialists that, given the upcoming holidays and staffing, it is unlikely our office can start to process the data before the new year. If we are able to narrow the size of data to be added to a review platform or if defense counsel is willing to accept a PDF production, we may be able to decrease the processing time by a week or two. Furthermore, the government will need at least four to six weeks to review the data given that one of the undersigned attorneys has trials set for March 16, 2020, and April 6, 2020. The government anticipates that defense counsel will have similar lead times and conflicts that will affect the timeline by which they will be able to process and review the data.

⁵ As noted previously, we are willing to make a copy of all the Canadian data now and provide it to defense counsel. Yet, we still need to process that data and Bates stamp the relevant documents. Discovery in this case is immense, and the government anticipates that the Bates stamps will be an important tool at trial for purposes of tracking the exact location of certain records in discovery.

ANALYSIS

The Court is well aware that official requests for evidence in a foreign country can take considerable time—sometimes even years—and the United States does not have control over that process. In fact, that is why the Speedy Trial Act mandates a delay in trial and exclusion of time related to an official request for evidence in a foreign country. Section 3161(h)(8) states that several types of delay “shall be excluded . . . in computing the time within which [a] trial . . . must commence,” including:

[a]ny period of delay, not to exceed one year, ordered by a district court upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in section 3292 of this title, has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

Section 3292(d) defines an “official request” as “a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country.”

Here, the facts are more than sufficient to trigger application of § 3161(h)(8). The government submitted an MLAT request to Canada on March 12, 2018, which is an “official request” under § 3292(d). The requested evidence concerns the offenses charged in this case, and given that Canada produced the data described above it is clear that, at the time of the request, the evidence was, in fact, in Canada. The government therefore submits that a period of delay and an exclusion of time of up to one year is warranted.

Although at least one defense counsel has expressed opposition to a continuance, there are several reasons to find that all parties would benefit from a delay. First, defense counsel

sought a delay in trial at arraignment when discovery was estimated to be 88 gigabytes. It is difficult to understand why defense counsel would not want a continuance when the size of discovery has ballooned to nearly 2.75 terabytes. Second, the Court already has found that this case should be set for trial outside the Speedy Trial Act due to its complexity as to both the number of defendants and the nature of the prosecution. If anything, the new evidence from Canada makes the case even more complex. Third, although a delay pursuant to § 3161(h)(8) does not turn on the public's right to a speedy trial, we submit that the ends of justice are best served when parties have a full understanding of the evidence at issue and that these ends of justice outweigh the best interest of the public in a speedy trial in this situation.

As for a new trial date, we ask for a four-month continuance until June 22, 2020. As noted above, one of the undersigned prosecutors currently has trials set for March 16, 2020, and April 6, 2020, and we anticipate we will not be able to start reviewing this new discovery until sometime in February 2020. Based on our schedules, we expect our review of this new evidence will take at least several weeks and will not be completed until late April or early May, and that we will then need additional time to synthesize this discovery with our existing evidence. Accordingly, a trial date on or after June 22, 2020 is necessary and appropriate. Moreover, none of the defendants are currently detained, so the requested continuance would not unnecessarily prolong anyone's pretrial detention.

CONCLUSION

The United States asks that trial in this case be continued from February 3, 2020, to June 22, 2020, and the time between February 3, 2020 and June 22, 2020, be excluded under the Speedy Trial Act because because of complexity, pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii), and because of the arrival of a huge amount of data in response to an official request made for

evidence from a foreign country, pursuant to 18 U.S.C. § 3161(h)(8).

Respectfully submitted,

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Date: December 18, 2019

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