

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

TIMOTHY LOUIS HALE-CUSANELLI,

Defendant.

Hon. Trevor N. McFadden
Criminal No. 21-00037-TNM
Status May 28, 2021

**DEFENDANT’S MOTION FOR ASCERTAINMENT OF COUNSEL
AND REPORT TO THE COURT CONCERNING DISCOVERY AND PLEA
NEGOTIATIONS**

Defendant, by and through undersigned counsel, wishes to bring matters to the Court’s attention in anticipation of the status hearing scheduled for May 28, 2021. The parties were last before the court on May 12, 2021. At that time the defense expressed concern to the court regarding the paucity of discovery in this case. To date the prosecution has disclosed the defendant’s custodial interview, a surreptitiously recorded conversation between the defendant and a cooperating witness who was wearing a recording device provided by law enforcement, two portions of text messages between the defendant and two other civilians. The prosecution has provided nothing else, particularly no evidence regarding what defendant did on January 6 either outside or inside the Capitol. Nor any other

evidence regarding the defendant's activity in relation to the charged offenses.¹

Additionally, the prosecution has not made any plea offer.

On May 21, 2022, the prosecution and defense counsel had a telephone conference to discuss outstanding discovery and possible negotiated disposition for this case.² At that time the prosecution advised they were not prepared to make any plea offer nor were they prepared to disclose any additional discovery. Additionally, they could not predict when additional discovery would be made available. They did explain that the discovery was voluminous and expressed assurances that they were working diligently to review the voluminous material and make it available at some point in the future though there was no indication when that would happen.

Defendant is justifiably frustrated with the lack of progress undersigned counsel has made in this case. Defendant has been preventively detained over four months in a case where no one ever alleged that he ever did anything violent. Frankly counsel is similarly frustrated with the lack of progress in this case.

¹ Defendant advises that other defendants have disclosed to him that other defendants indicated they received discovery of recordings from inside the Capitol where defendant has been seen peacefully walking in the hallways.

² Undersigned counsel does not wish these comments to be viewed as disparaging regarding the individual prosecutor representing the United States in this case. She has at all times been cordial, professional and conscientious. She is simply the messenger. Undoubtedly it is not her decision to refuse to honor discovery obligations.

Counsel has been advised that defendant wishes counsel to be replaced. Counsel brings that matter to the Court's attention in advance so that it may be addressed at the May 28, 2021, status hearing.

WHEREFORE, it is respectfully requested the Court address defendant's request for replacement counsel and the prosecution's failure to comply timely with their discovery obligations.

Respectfully submitted,

/s/ _____

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Counsel for Timothy Hale-Cusanelli

CERTIFICATE OF SERVICE

I certify that on May 22, 2021, the foregoing was electronically served by email to AUSA Kathryn Fifield. at Kathryn.Fifield@usdoj.gov

/s/ _____

Jonathan Zucker