

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

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UNITED STATES OF AMERICA	:	
	:	
	:	Criminal No. 21-670 (CJN)
	:	
v.	:	
	:	
STEPHEN K. BANNON,	:	
	:	
<i>Defendant.</i>	:	

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**RENEWED MOTION TO CONTINUE TRIAL DUE TO PRE-TRIAL PUBLICITY**

Defendant Stephen K. Bannon, by and through his undersigned counsel, respectfully moves, once again, pursuant to the Fifth and Sixth Amendments to the United States Constitution for a continuance of the trial in this matter, until a date after October 15, 2022, that is convenient for the Court or such other date as the Court deems appropriate. In support of this motion, we state as follows:

**Background and Prior Related Pleadings**

On June 29, 2022, Defendant Bannon filed a Motion to Continue Trial [Doc. 88]. That motion was directed mostly to the extensive prejudicial pre-trial publicity surrounding the professionally produced, maximum impact-edited, televised public hearings the Select Committee held on June 9, 13, 16, 21, 23 and 28, with more promised right on the eve of the scheduled trial date in this case and the unduly prejudicial impact the hearings held already will have on Mr. Bannon's Fifth and Sixth Amendment rights, with more such hearings promised even closer in time to the trial [Doc. 88]. On July 1, 2022, the Government filed its Opposition

to the Motion to Continue [Doc. 93]. On July 6, 2022, Mr. Bannon filed his Reply in further support of his motion to continue [Doc. 95].

In his reply, filed closer in time to the trial date, Mr. Bannon reiterated the pre-trial publicity related claims, providing additional statistical support for them [Doc. 95-1], and added additional grounds directly related to his constitutionally guaranteed fair trial rights and right to effective assistance of counsel [Doc. 95]. These additional grounds flowed from the late hour in these proceedings without knowing what witness and defenses would be permitted at trial, rendering the defense unable to meaningfully develop a defense theory and concomitant steps in the trial process to effectively defend Mr. Bannon [Doc. 95]. On July 6, 2022, the Government filed a motion for leave to file a Sur-reply, with a proposed pleading attached [Docs. 96, 96-1].

On July 11, 2022, the Court heard oral argument on the motion to continue trial and entered an oral Order denying it, following the hearing [July 11, 2022, Hearing Tr.], with a Minute Order reflecting the denial of the motion entered on the docket on July 12, 2022.

### **Grounds for the Renewed Motion**

Mr. Bannon now files this Renewed Motion to Continue Trial based on directly relevant developments occurring and discovered earlier today. Mr. Bannon incorporates herein his earlier pleadings on the subject, Docs. 88 & 95 and his oral argument on the subject on July 11, 2022 and respectfully reiterates them and the claims and concerns raised therein in full force here. He asks the Court to consider all of the facts and concerns raised therein together with the new facts set forth herein and to consider their cumulative effect when considering this Renewed Motion to Continue Trial. This Renewed Motion to Continue Trial is focused exclusively on today's developments and discovery related to the matter of pre-trial publicity.

**Video/Commentary On Mr. Bannon at July 12, 2022 Televised Committee Hearing**

At the time oral argument was held, the defense knew that an additional televised Committee hearing was scheduled for July 12, 2022; but did not know the exact subject or whether it would feature anything about Mr. Bannon.

The defense learned today that the July 12, 2022, televised Committee hearing did indeed feature Mr. Bannon with a highly inflammatory video clip from Mr. Bannon's podcast, selectively edited for the most inflammatory effect and with accompanying commentary designed to portray Mr. Bannon as a central player in the events of January 6<sup>th</sup>.<sup>1</sup> In her commentary, the Committee member, Representative Murphy, emphasized evidence of telephone calls between Mr. Bannon and President Trump, in contact with him at key times related to the events of January 6<sup>th</sup>, with the implication that Mr. Bannon was a central participant in the Committee's "incitement" by "extremists" theme for the day's hearings.<sup>2</sup>

The following are text excerpts from the relevant portion of the Hearing and links to the video clip of Mr. Bannon, edited for maximum inflammatory effect, consistent with the Committee's narrative of the day that "extremists" helped incite the events at the Capitol and that

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<sup>1</sup> Interestingly, the Committee member providing the accompanying commentary, expressly referred to Mr. Bannon as part of President Trump's "inner circle" as a "close advisor" to former President Trump, even as of January 6, 2021. This, of course, is the term used frequently in the OLC opinions relied upon and referred to by Mr. Bannon, regarding those people for whom the special rights, duties, and obligations triggered by the invocation of executive privilege apply. The Committee's description of Mr. Bannon's "close advisor" role is directly at odds with the Government's attempts in this case to portray Mr. Bannon as a "private citizen" who had been fired and was no longer in such a close advisory role, in order to advance the Government's position on the inapplicability of executive privilege and the OLC opinions.

<sup>2</sup> <https://www.politico.com/newsletters/huddle/2022/07/12/conspiracies-extremists-and-militias-on-jan-6-agenda-00045286>

Mr. Bannon was an extremist who was a particularly close advisor to President Trump and who was in regular contact with him in the relevant time frame:

**HEARING #7: JULY 12, 2022**

**Commentary Text:**

**REP. STEPHANIE MURPHY:** The next day on January 5th, the day before the attack on the Capitol, tens of thousands of people converged on Washington. While certain close associates of President Trump privately expressed concern about what would occur on January 6th, other members of the President's inner circle spoke with great anticipation about the events to come. The committee has learned from the white house phone logs that the President spoke to Steve Bannon, his close adviser, at least twice on January 5th. The first conversation they had lasted for 11 minutes. Listen to what Mr. Bannon said that day after the first call he had with the President.

**Then Rep, Murphy plays a video clip, selectively edited for maximum inflammatory impact:**

**Text of the Video:**

**STEPHEN K. BANNON:** All hell is going to break loose tomorrow. All converging and now we're on, as they say, the point of attack. Right? The point of attack tomorrow. I'll tell you this, it's not going to happen like you think it's going to happen. Okay? It will be quite extraordinarily different. And all I can say is strap in.

**Here are links to the video the Committee played for the television audience on July 12, 2022:**

TVeyes Link: <http://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID=000ea25a-fa60-4518-82bf-246680d05e86>

DropBox Link: [https://www.dropbox.com/s/h39fw5jqxfzj0f/WRC\\_07-12-2022\\_14.56.15.mp4?dl=0](https://www.dropbox.com/s/h39fw5jqxfzj0f/WRC_07-12-2022_14.56.15.mp4?dl=0)

**Commentary Following the Edited Video:**

**REP. MURPHY:** From those same phone logs, we know that the President and Mr. Bannon spoke again on the phone that evening, this time for six minutes.<sup>3</sup>

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<sup>3</sup> Clearly, with the guidance of the professional television producer the Committee hired to maximize the impact and influence each televised hearing is designed to have, the Committee edited the video clip to have the most inflammatory effect possible in a short time. Undoubtedly, if history is a guide, Government counsel will once again attempt to minimize the significance of this video and commentary and characterization of Mr. Bannon by noting that it was only a small portion of the day's televised hearings. But that, of course, misses the points and would misrepresent its impact. Mr. Bannon is well known and is portrayed by the Committee as a particularly close and influential advisor in President Trump's "inner circle" and the Committee

**JULY 17, 2022, CNN SPECIAL REPORT ON STEVE BANNON:**  
**“DIVIDED WE FALL”**

The defense also learned just today that on Sunday night, July 17, 2022, the night before Mr. Bannon’s trial is scheduled to begin, during this time of intense, targeted publicity from the televised Committee hearings, CNN is planning to run a special one-hour documentary on Mr. Bannon, called “Divided We Fall.” The program is scheduled to be broadcast at 8:00 p.m. and rebroadcast in its entirety at 11:00 p.m. on CNN on July 17<sup>th</sup>.<sup>4</sup>

The Special Report on Mr. Bannon, broadcast on the eve of trial is being widely promoted with a trailer and special announcements by key CNN hosts.

For example, here is an example of a “teaser” programming announcement about the show by one of CNN’s best known figures:

**CNN DOCUMENTARY TEASER: JULY 11, 2022**

**JAKE TAPPER: A quick programming note. Join CNN's Drew Griffin for a new investigation into Steve Bannon and his master plan to reshape the U.S. government and the Republican Party and indeed the United States. The CNN special report, Steve Bannon, divided we fall, begins at 8:00 p.m. Eastern on Sunday evening.**

**CNN DOCUMENTARY VIDEO CLIPS:**

TVEyes Link: <http://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID=3a2072c2-edd1-49e5-9131-fee3993c3292>

DropBox Link: [https://www.dropbox.com/s/s4grkvma0m3a7aj/CNN\\_07-11-2022\\_16.20.05.mp4?dl=0](https://www.dropbox.com/s/s4grkvma0m3a7aj/CNN_07-11-2022_16.20.05.mp4?dl=0)

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knows that his specific words in the podcast in the video have been cast by the media as particularly inflammatory such that this video is designed to have an indelible, lasting effect on the viewer's memory. Such impact is not determined by the length of time for which an event is portrayed as we all well know from common experience and from seeing fleeting events which we will never forget. See e.g., <https://www.youtube.com/watch?v=rAAKjg4gRpQ>; <https://www.youtube.com/watch?v=r6PcVCqg3tg>; [https://www.espn.com/video/clip/\\_/id/24413683](https://www.espn.com/video/clip/_/id/24413683).

<sup>4</sup> <https://www.cnn.com/tv/schedule/cnn> (Select July 17, 2022 from pull-down menu).

CNN is even promoting the July 17<sup>th</sup> Special Report on Mr. Bannon with a trailer. Here are examples that ran on July 10, 2022.

**CNN DOCUMENTARY TRAILER: JULY 10, 2022**

**STEPHEN K. BANNON: We will govern for 100 years.**

**NARRATOR: In rare interviews, CNN investigates the man and his master plan.**

**DREW GRIFFIN: What did Bannon bring to you?**

**BRAD PARSCALE: Bannon's calling the plays.**

**NARRATOR: CNN special report. Steve Bannon. Divided we fall. Next Sunday at eight.**

**CNN DOCUMENTARY TRAILER VIDEO CLIPS: JULY 10, 2022**

TVEyes Link: <http://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID=8960f3e6-4139-489b-8df9-d3ff737014bd>

DropBox Link: [https://www.dropbox.com/s/mt7b7juhcn69uv/CNN\\_07-10-2022\\_22.22.37.mov?dl=0](https://www.dropbox.com/s/mt7b7juhcn69uv/CNN_07-10-2022_22.22.37.mov?dl=0)

The title, the teaser, and the trailer are, of course, designed to capture viewers' attention. The teaser uses the term "Master Plan" to describe Mr. Bannon's purported machinations, with clearly intentional reference to this well-known weighted term referring to history's most diabolical plot.<sup>5</sup> The trailer has purported Trump insider Brad Pascale characterizing Mr. Bannon as "calling the plays." The Special Report documentary, broadcast one this broadly disseminated network undoubtedly will be extraordinarily inflammatory and overwhelming prejudicial for a prospective juror, beginning service in this trial the following day.

While the Court has indicated it intends to address all potential risk of prejudice from pre-trial publicity through the voir dire process [July 11, 2022 Hearing Tr. at 144-145], with all due respect, that process cannot and will not remedy the overwhelming prejudice that will flow

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<sup>5</sup> <https://searchworks.stanford.edu/view/9379635>

from this hour long documentary focused exclusively on Mr. Bannon, broadcast and re-broadcast by a network for which everything about Mr. Bannon is portrayed in the most negative light possible, the night before this trial is scheduled to begin and coming close on the heels of the televised Committee hearings already described, all of which must be considered cumulatively. At a minimum, the Court will have to engage in individual sequestered voir dire, given the tremendous risk of prejudice.<sup>6</sup> However, that will not cure the very serious risk of prejudice here; for in order to engage in the voir dire process, the Court will have to introduce the existence of this video and its title and subject, when the very act of doing so likely could cause additional prejudice and raise concerns among those who had not heard about it before.<sup>7</sup>

For all of the reasons previously put forward in Mr. Bannon's original motion and reply and at the July 11, 2022 oral argument, especially reiterating that there is just nothing magic about July 18<sup>th</sup> that can possibly justify the risk to Mr. Bannon's fundamental Fifth and Sixth Amendment rights, Mr. Bannon respectfully urges the Court to consider the matter anew and continue the trial in this case to a later date in light of the pre-trial publicity (and all other issues raised).

The prejudice here is a function of the accumulation of relevant developments – the televised Committee hearings directed by a television producer to have maximum impact and influence on viewers and their rebroadcasts and related publicity, along with the fact that Mr.

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<sup>6</sup> See e.g., *Patton v. Yount*, 467 U.S. 1025 (1984); *Irvin v. Dowd*, 366 U.S. 717 (1961); *Jordan v. Lippman*, 763 F.2d 1265 (11<sup>th</sup> Cir. 1985); *Coleman v. Kemp*, 778 F.2d 1487, 1542 (11<sup>th</sup> Cir. 1985).

<sup>7</sup> See e.g., *Williams v. Griswold*, 743 F.2d 1533, 1540 n.14 (11<sup>th</sup> Cir. 1984) (recognizing danger of apprising otherwise ignorant jurors of the prejudicial material).

Bannon has been repeatedly portrayed in them and in most negative and inflammatory ways along with this featured and promoted one-hour Special Report documentary on CNN devoted entirely to Mr. Bannon and scheduled to run twice on the night before the trial is scheduled to begin.

Mr. Bannon would simply reiterate basic long-standing principles advanced at the hearing on July 11, 2022: “A myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality.” *Unger v. Sarafite*, 376 U.S. 575, 589 (1964). “The naïve assumption that prejudicial effect can be overcome by instructions to the jury, ... all practicing lawyers know to be unmitigated fiction.” *Krulewitch v. United States*, 336 U.S. 440, 453 (1949) (Jackson, J., concurring). “One cannot assume that the average juror is so endowed with a sense of detachment, so clear in his introspective perception of his own mental processes, that he may confidently exclude even the unconscious influence of his preconceptions as to probable guilt, engendered by a pervasive pre-trial publicity.” *Delaney v. United States*, 199 F.2d 107, 112-113 (1<sup>st</sup> Cir. 1952).

Mr. Bannon respectfully asks the Court to continue the trial date to a date in the future that would give the pre-trial publicity from the Committee hearings and this Special Report one-hour documentary on Mr. Bannon and their cumulative effect.

Dated: July 13, 2022

Respectfully submitted,

**SILVERMAN|THOMPSON|SLUTKIN|WHITE, LLC**

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*Counsel for Defendant Stephen K. Bannon*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13th day of July 2022, a copy of the foregoing Renewed Motion To Continue Trial was served *via* the Court's CM/ECF system on registered parties and counsel.

/s/ M. Evan Corcoran  
M. Evan Corcoran (D.C. Bar No. 440027)

