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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA

4 v.

23 CR 347 (JGK)

5 ALEXANDER MASHINSKY

6 Defendant

-----x

7 New York, N.Y.
8 February 20, 2024
12:00 p.m.

9 Before:

10 HON. JOHN G. KOELTL

District Judge

11 APPEARANCES

12 DAMIAN WILLIAMS

13 United States Attorney for the
Southern District of New York

14 ALLISON NICHOLS

Assistant United States Attorney

15 MUKASEY YOUNG LLP

Attorneys for Defendant

16 MARC L. MUKASEY

17 TORREY K. YOUNG

18 MICHAEL F. WESTFAL

19 ALSO PRESENT: BRANDON RACZ, FBI

RICHARD PALMA, CJA Attorney

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1 (In open court; case called)

2 DEPUTY CLERK: All parties please state who they are
3 for the record.

4 MS. NICHOLS: Allison Nichols for the government.
5 With me is Special Agent Brandon Racz of the FBI.

6 Good afternoon, your Honor.

7 MR. MUKASEY: Good afternoon, Judge.

8 Marc Mukasey for the defendant, Alex Mashinsky, who is
9 seated to my left.

10 And to his left is my partner, Torrey Young, and our
11 colleague, Michael Westfal.

12 THE COURT: Good afternoon all.

13 The reason that we are here is to hold a Curcio
14 hearing with respect to Mr. Mashinsky's representation by
15 Mr. Mukasey and Ms. Young.

16 So, Mr. Fletcher, please administer the oath to the
17 defendant.

18 ALEXANDER MASHINSKY, sworn.

19 DEPUTY CLERK: Please state your name for the record.

20 THE DEFENDANT: Alex Mashinsky.

21 THE COURT: Mr. Mashinsky, do you understand that you
22 are now under oath, and that if you answer any of my questions
23 falsely, your false or untrue answers may later be used against
24 you in another prosecution for perjury or making a false
25 statement?

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1 THE DEFENDANT: I do.

2 THE COURT: Let me begin with an explanation. I said
3 at the outset that this is a Curcio hearing. A defendant in a
4 criminal case has the right to be represented by a lawyer who
5 has absolutely no conflicts of interest. And if a defendant
6 cannot pay the cost of such a lawyer, the defendant is entitled
7 to have counsel appointed for the defendant free of cost. Do
8 you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: In this particular case, the government
11 has alleged that there are possible conflicts of interest
12 between Mr. Mukasey and Ms. Young in representing you, while at
13 the same time they're representing Sam Bankman-Fried in another
14 criminal case.

15 The gist of what the government says are possible
16 conflicts of interest is that you are a founder of a company
17 called Celsius. Mr. Bankman-Fried is the founder and owner of
18 a company called Alameda Research. The interest of your
19 company, Celsius, may conflict with those of Alameda Research.
20 It may be that your company claims that it is a victim of
21 Alameda Research, and that as a result of that, your company
22 and you would be entitled to restitution from
23 Mr. Bankman-Fried.

24 In that connection, there have been lots of documents
25 produced in connection with the criminal case against

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1 Mr. Bankman-Fried that are subject to some protective orders.
2 Mr. Mukasey and Ms. Young may be subject to those protective
3 orders so that the discovery produced in that case to them as
4 lawyers for Bankman-Fried may not be available to you in this
5 case. The documents that have been produced may be subject to
6 different protective orders.

7 So it may be in general that the arguments that they
8 make on behalf of Mr. Bankman-Fried may be in conflict with
9 arguments that they would like to make on your behalf in this
10 case and they may feel constraints against making those
11 arguments on your behalf because of their continuing loyalty to
12 Mr. Bankman-Fried. Do you understand all of that?

13 THE DEFENDANT: I do.

14 THE COURT: Do you have any questions about any of
15 that? Do you have any questions?

16 THE DEFENDANT: I don't have questions. Again, this
17 is a first time in the court, it's not -- I'm not an expert in
18 this space, so ...

19 THE COURT: Okay. I just want to make sure that if I
20 say anything that raises a question in your mind and that you
21 would like to ask me, you just tell me, and you're certainly
22 welcome to consult with Mr. Mukasey and Ms. Young about
23 anything that I say. Do you understand that?

24 THE DEFENDANT: I do.

25 THE COURT: Okay. So I say all of this as background

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1 to explain to you that you have a right to a lawyer with
2 absolutely no conflicts of interest and to give you some
3 background about why the government contends that there may be
4 a conflict of interest in Mr. Mukasey and Ms. Young
5 representing you in this case. Do you follow that?

6 THE DEFENDANT: Yes.

7 THE COURT: I am now going to ask you some more
8 specific questions. I am going to begin by making sure that
9 you are competent to understand the possible conflicts and to
10 waive, if you wish, any potential conflicts.

11 So tell me your name.

12 THE DEFENDANT: Alex Mashinsky.

13 THE COURT: And how old are you?

14 THE DEFENDANT: 59 years old.

15 THE COURT: How far did you go in school?

16 THE DEFENDANT: I attended college.

17 THE COURT: Are you able to speak and understand
18 English?

19 THE DEFENDANT: I do.

20 THE COURT: Are you now or have you recently been
21 under the care of a doctor or a psychiatrist?

22 THE DEFENDANT: I have a doctor, yes.

23 THE COURT: Okay. Are you seeing the doctor for any
24 conditions that may affect your ability to understand these
25 proceedings and to consult with your lawyer?

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1 THE DEFENDANT: No, I don't.

2 THE COURT: Have you ever been treated or hospitalized
3 for any mental illness or any type of addiction?

4 THE DEFENDANT: No, I have not.

5 THE COURT: In the past 24 hours, have you taken any
6 drugs, medicine or pills?

7 THE DEFENDANT: No, I don't.

8 THE COURT: Is your mind clear today?

9 THE DEFENDANT: I hope so, yes.

10 THE COURT: Are you feeling all right today?

11 THE DEFENDANT: Yes.

12 THE COURT: Now, I have explained to you the general
13 outlines of what the government says may create a conflict of
14 interest between Mr. Mukasey and Ms. Young representing you in
15 this case while they are continuing to represent and have
16 represented Mr. Bankman-Fried in another case.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you consulted with Mr. Mukasey and
20 Ms. Young about this possible conflict of interest?

21 THE DEFENDANT: I did.

22 THE COURT: I have explained to you the ways in which
23 they are representing Mr. Bankman-Fried may present a conflict
24 of interest. One of the problems in trying ton understand
25 conflicts of interest is that it's impossible to foresee all of

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1 the possible ways in which a conflict of interest may affect
2 you. Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Could you tell me in your own words what
5 you understand to be the possible conflict of interest between
6 Mr. Mukasey and Ms. Young representing you in this case while
7 at the same time they're representing Mr. Bankman-Fried?

8 THE DEFENDANT: Yeah. My concerns are that I'm making
9 a big investment of time and of money to obviously prove my
10 innocence in my case, and that in some way the conflict of
11 interest may cause the Mukasey team not to be able to represent
12 me going forward. That's my main concern.

13 I understand the potential for conflict of interest.
14 I don't think there is one, but I do have a concern about them
15 right before trial, for example, saying, sorry, we are
16 conflicted, and you have to go and seek new counsel. So that's
17 my main concern.

18 THE COURT: Okay. Could you just explain a little
19 more why you think a conflict could arise?

20 THE DEFENDANT: Because we can't foresee the future.
21 That's ...

22 THE COURT: Okay. They may think that they couldn't
23 make an argument on your behalf because it would conflict with
24 their representation of Mr. Bankman-Fried.

25 THE DEFENDANT: I assume that his sentencing will be

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1 completed before my trial, but it may not be. So it's things
2 like that that are unforeseen, but ...

3 THE COURT: Okay. Are you prepared to waive any or
4 give up your right to object to Mr. Mukasey and Ms. Young
5 representing you in this case?

6 THE DEFENDANT: So I considered the fact and I agreed
7 to waive my right. I signed a waiver agreement.

8 THE COURT: Okay. Did anyone make any threats or
9 promises to you or give you any inducements to get you to waive
10 any possible conflicts that Mr. Mukasey and Ms. Young may have
11 in representing you in this case?

12 THE DEFENDANT: No, I don't have any threats or
13 inducement.

14 THE COURT: Do you understand that if you give up or
15 waive any possible conflict that Mr. Mukasey and Ms. Young have
16 in this case, you are giving up or waiving that conflict for
17 purposes of this case now and forever? You are giving up that
18 right to object on the basis of any possible conflict today and
19 at all future times, including any appeals in this case. So
20 you're making the decision now, and it applies throughout the
21 future. Do you understand?

22 THE DEFENDANT: I do. I understand.

23 THE COURT: Is there anything else that you want me to
24 explain to you?

25 THE DEFENDANT: I can't think of anything.

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1 THE COURT: Okay. Now, you have the right to be
2 represented by another lawyer, an independent lawyer, who has
3 no conflict, no interest other than yours, and to consult with
4 that lawyer before you finally make the decision to waive any
5 conflicts that Mr. Mukasey and Ms. Young have. Have you
6 consulted with an independent lawyer?

7 THE DEFENDANT: I did.

8 THE COURT: Who is that lawyer?

9 THE DEFENDANT: Sheryl Giugliano with Muscou and -- I
10 don't remember the full name of the firm, but it has the name
11 Muscou in it.

12 THE COURT: Is Ms. Giugliano here?

13 THE DEFENDANT: No, she's not.

14 THE COURT: No.

15 THE DEFENDANT: It's really her partner David who is
16 the criminal lawyer.

17 THE COURT: Okay. I want to give you the opportunity
18 to continue to consult with Ms. Giugliano or her partner, or if
19 you weren't consulting with another lawyer, I'd appoint another
20 lawyer to consult with you.

21 I am going to adjourn the proceeding to a convenient
22 time, because I want to make sure that you have had the
23 opportunity to consult with separate counsel. And I want to
24 hear from separate counsel that they agree that this is a
25 possible conflict that can be waived and that you have

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1 knowingly and voluntarily waived that. I want to hear from
2 Mr. Mukasey and his colleague that they agree that they can
3 represent without you being influenced by any possible
4 conflict. And I want to hear from the government that this is,
5 in fact, a waivable conflict.

6 So I'm going to adjourn the hearing to a convenient
7 time for everyone soon. But before I do that, Mr. Mukasey, do
8 you think I should ask any other questions of the defendant at
9 this point?

10 MR. MUKASEY: I don't think so, Judge. We recommended
11 that Mr. Mashinsky speak to independent counsel. I also want
12 to just put on the record that Ms. Young and I conferred with
13 our own firm's professional responsibility counsel concerning
14 the applicable Rules of Professional Responsibility and did
15 secure a written waiver from Mr. Mashinsky. But proceeding in
16 an abundance of caution, your Honor's plan seems perfectly good
17 to us.

18 THE COURT: Okay. The government, first of all, do
19 you want me to ask any other questions of the defendant at this
20 point?

21 MS. NICHOLS: No. Thank you, your Honor.

22 THE COURT: Does the government know of any reason
23 that this is not a waivable conflict or any basis to believe
24 that so far the defendant has not knowingly and voluntarily
25 waived any potential conflict?

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1 MS. NICHOLS: We do believe that the conflict is both
2 potential and waivable, your Honor. And from what we are
3 hearing today, as well as my conversations with Mr. Mukasey and
4 Ms. Young ahead of today, we do believe that Mr. Mashinsky
5 understands, and that his waiver is knowing and voluntary.

6 THE COURT: I certainly would like to complete the
7 proceeding soon, so sometime either later this week or the
8 beginning of next week. And I will take a very brief break so
9 that Mr. Fletcher can consult with you on a mutually convenient
10 date.

11 (Recess)

12 MR. MUKASEY: Judge, would it be okay if I gave a bit
13 of a status update?

14 THE COURT: Yes, certainly.

15 MR. MUKASEY: So just to backtrack a little bit,
16 Mr. Mashinsky had discussed with our firm going back to January
17 the potential conflict here in our representation of
18 Mr. Bankman-Fried, and the way that could potentially
19 hypothetically be adverse to him, and his right to
20 conflict-free counsel. We obtained a written waiver from him
21 that he signed, I believe, January 4.

22 Since then, we've also advised him that -- again, that
23 he can and should speak to independent counsel. I'm informed
24 that he spoke to independent counsel -- yesterday?

25 THE DEFENDANT: Yes.

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1 MR. MUKASEY: -- within the last couple of days, I
2 think at a law firm called Ruskin, Moscou, Faltischek. We
3 tried to reach the lawyer at that firm during the break and we
4 were unable to. So he is not here. However, Mr. Palma is
5 here, the CJA lawyer on duty, and we encourage Mr. Mashinsky,
6 if he wishes to continue that discussion, either with the
7 lawyer at the Moscou firm or with Mr. Palma, who I understand
8 is willing to do this today to move things along, but I -- we
9 want the Court and the client to be as comfortable and take as
10 much time as necessary.

11 THE COURT: That's fine. Thank you for the update.

12 Commonly, Mr. Mashinsky, in the course of a Curcio
13 hearing, a judge appoints the Criminal Justice Act attorney for
14 the day as independent Curcio counsel to consult with the
15 defendant.

16 It's not at all common to have the situation where a
17 defendant has already consulted with independent counsel. So
18 you've consulted with independent counsel, and I am certainly
19 prepared to have you consult with the Criminal Justice Act
20 counsel for today just so that you've had the opportunity to
21 consult with independent counsel. And you have told me already
22 that you had consulted with the Ruskin firm and were prepared
23 to waive any conflict going forward with Mr. Mukasey and
24 Ms. Young.

25 As I told you at the sort of what's known as the

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1 second phase of the Curcio hearing, I listen to all of the
2 lawyers, including your independent counsel, to make sure that
3 you have been adequately advised, and that you wish to waive
4 any conflicts you have with Mr. Mukasey and Ms. Young.

5 So if you wish, I am perfectly prepared to have you
6 consult with the Criminal Justice Act counsel for today,
7 Mr. Palma, and then to come back later today after you've had
8 the opportunity to consult with Mr. Palma, and to listen if you
9 are still of the mind to waive any conflicts that Mr. Mukasey
10 and Ms. Young have. Or we could put it off until you could get
11 your other independent counsel here and proceed then. So if
12 you are prepared to consult with independent counsel,
13 Mr. Palma, that would be fine. It's up to you.

14 THE DEFENDANT: Thank you, your Honor. I spent an
15 hour yesterday with David and Sheryl from Ruskin Moscou
16 Faltischek, and I did spend a few minutes with Mr. Palma before
17 the hearing today, and I'm comfortable that, you know, I was
18 advised of all the potential conflicts. And so if your Honor
19 wishes me to spend more time with Mr. Palma, I'm happy to do
20 so.

21 THE COURT: Yes.

22 So, Mr. Palma.

23 MR. PALMA: Good afternoon, your Honor.

24 THE COURT: Good afternoon. I will appoint you under
25 the Criminal Justice Act to represent Mr. Mashinsky to consult

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1 with him about whether he wishes to waive any conflicts that
2 Mr. Mukasey and Ms. Young have and then to resume this hearing
3 at 1:45 if that's okay.

4 MR. PALMA: Certainly, your Honor.

5 With the Court's permission, could we use the jury
6 room?

7 THE COURT: Absolutely. Okay. So we will adjourn
8 until 1:45. Thank you all.

9 (Recess)

10 DEPUTY CLERK: Continuation of United States v.
11 Alexander Mashinsky.

12 THE COURT: The attorneys for the government,
13 Mr. Mukasey and Ms. Long are here with the defendant, and
14 Mr. Palma, whom I appointed as Curcio counsel, is also here.

15 Mr. Mashinsky, have you had an opportunity to consider
16 everything that we discussed this morning in connection with
17 the possible conflict of interest or potential conflict of
18 interest that Mr. Mukasey and Ms. Long have in representing
19 you?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you have any questions for me?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: And have you had an opportunity to consult
24 with Mr. Palma about waiving any conflicts that Mr. Mukasey and
25 Ms. Long have?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Are there any questions that you have for
3 me or anything that you'd like me to explain further?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: After considering everything that we
6 discussed this morning, do you wish to proceed with Mr. Mukasey
7 and Ms. Long as your counsel?

8 MR. MUKASEY: Just for the record, Judge, it's
9 Ms. Young. Y-O-U-N-G.

10 THE COURT: Ms. Young.

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you wish to waive any potential
13 conflicts that Mr. Mukasey and Ms. Young have in representing
14 you?

15 THE DEFENDANT: I think I signed the waiver already,
16 so I'm standing by my waiver.

17 THE COURT: Okay. Do you understand that by waiving
18 any potential conflict you're waiving it for now and in the
19 future, including any appeals in this case?

20 THE DEFENDANT: I do, your Honor.

21 THE COURT: Okay. Mr. Palma, have you had the
22 opportunity to consult with Mr. Mashinsky?

23 MR. PALMA: Yes, I have, and I believe he fully
24 understands actual conflicts of interest and potential
25 conflicts of interest, and we discussed the potential conflicts

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1 of interest in this case, and he fully understands that that is
2 a waivable conflict. He's prepared to explain it to you.

3 THE COURT: Based on your discussion, is it your
4 conclusion that he can knowingly and voluntarily waive any of
5 the potential conflicts?

6 MR. PALMA: Yes, your Honor.

7 THE COURT: Okay.

8 Mr. Mukasey, are you confident that you can proceed
9 with the representation of Mr. Mashinsky without any
10 interference from any potential conflicts with your
11 representation of Mr. Bankman-Fried?

12 MR. MUKASEY: I believe we can fulfill our
13 constitutional obligation to Mr. Mashinsky while respecting our
14 obligations to both clients under the Professional Rules of
15 Responsibility.

16 THE COURT: Okay.

17 Ms. Young, are you confident that you can represent
18 Mr. Mashinsky without any interference from any potential
19 conflicts with your representation with Mr. Bankman-Fried?

20 MS. YOUNG: Yes, your Honor.

21 THE COURT: Does the government think that the
22 defendant can waive any potential conflicts that Mr. Mukasey
23 and Ms. Young have in representing Mr. Mashinsky from their
24 representation of Mr. Bankman-Fried?

25 MS. NICHOLS: We do.

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1 THE COURT: Okay. Thank you. I find that any
2 conflict that Mr. Mukasey and Ms. Young have from representing
3 Mr. Bankman-Fried is only a potential conflict; that it is
4 waivable, and that Mr. Mashinsky has knowingly and voluntarily
5 waived any such conflict.

6 Anything further?

7 MS. NICHOLS: Yes, your Honor. The government has an
8 application with respect to the trial schedule in this case,
9 which we have talked with defense counsel about ahead of today.

10 THE COURT: I should say, Mr. Palma, you're excused.
11 Thank you for your representation.

12 MR. PALMA: Thank you very much, your Honor.

13 MS. NICHOLS: Thank you, your Honor.

14 So the government and defense counsel have talked in
15 advance of the conference today, and the government wishes to
16 put a proposal before the Court for your consideration. The
17 issue, your Honor, is that I expect to be out on maternity
18 leave during the trial in this case. So we discussed with
19 defense counsel the possibility of a brief adjournment and
20 looking to a trial date in early 2025. I, of course, don't
21 know the Court's schedule, but the parties had contemplated
22 perhaps something in late January or early February. As I
23 said, the defense consents under the Speedy Trial Act. And I
24 think that under that Act, this adjournment is in the interest
25 of justice and outweighs the defendant's right in a speedy

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1 trial for a few reasons that I'd be happy to proffer.

2 The first is, of course, as I mentioned, the
3 continuity of government counsel, which is one factor that the
4 Court can consider. I think the other factors that are very
5 relevant here largely pertain to the complexity of this case.
6 I think the additional time would be in the interest of -- I
7 won't speak for defense counsel, but -- certainly both parties
8 in continuing to prepare for trial, to ensure an efficient
9 presentation of the evidence and an efficient proceeding of the
10 trial.

11 I think the discovery in this case, as we have
12 discussed with the Court already, is extremely voluminous in
13 this case and somewhat complicated. Defense counsel and the
14 government have, in the months since we were last before your
15 Honor, had a number of discussions and back and forth about the
16 discovery that the government has produced. You know, I would
17 like to add that these conversations have been, from my
18 perspective, certainly extremely collaborative and collegial,
19 and we are working together to try to resolve some of the -- I
20 don't know if they're issues, but I think there are things that
21 have come up with respect to the metadata in the discovery
22 that, you know, defense counsel is seeing one thing and want to
23 understand how the government is processing the discovery
24 material and what metadata the government has available to it,
25 and these kinds of back-and-forth require consultation with

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1 each of our respective IT personnel and vendors.

2 So I think that is essentially what I have for the
3 Court, your Honor.

4 THE COURT: Mr. Mukasey?

5 MR. MUKASEY: Judge, we don't oppose the government's
6 application, and we echo the amicable collaborative nature,
7 and, frankly, the complexity of the discovery in this case. We
8 have discussed with our client the government's request for an
9 adjournment of a couple of months. We've hashed it out with
10 him, discussed with him pros and cons, and, as I say, we do not
11 oppose the government's application.

12 THE COURT: The trial is scheduled for September,
13 right?

14 MS. NICHOLS: Yes, your Honor.

15 THE COURT: Well, it's a four-month adjournment. It's
16 not a couple of months.

17 Mr. Mukasey, when you say that the defendant does not
18 oppose, does that mean that the defense supports an
19 adjournment; that the defense thinks that the adjournment is --
20 that the continuance is necessary in the interest of justice or
21 simply that the defense is prepared to live with it?

22 MR. MUKASEY: I do so believe that it is in the
23 interest of justice, and I can be perhaps more precise and say
24 we join in the application. We consent to their application
25 and think that the interests of justice outweigh for the

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1 reasons Ms. Nichols stated the interest of the Court and the
2 public in a speedy trial.

3 THE COURT: Mr. Fletcher?

4 What's the estimate with respect to the length of
5 trial?

6 MS. NICHOLS: The government anticipates three weeks
7 for its case in chief, your Honor.

8 THE COURT: All right. I'll adjourn the case until
9 January 28, 2025 at 9:00 a.m. I am doing it on the
10 representations of counsel. First of all, continuity of
11 counsel is important, both for the government, as well as for
12 the defense. I would grant it equally, but there is no
13 application that it's necessary for defense counsel, but there
14 is an application that it is necessary for government counsel.
15 The case is plainly complicated. There is extensive discovery.
16 I accept the representations of counsel that the discovery is
17 voluminous, complicated, and that both sides agree that a
18 continuance is warranted based upon the complexity of the
19 evidence and the need to understand it. So I will adjourn the
20 trial date until January 28, 2025. The Court finds that the
21 continuance is necessary to assure effective assistance of
22 counsel, and because of the complexity of the case, the Court
23 finds that the ends of justice served by ordering the
24 continuance outweigh the best interest of the defendant and the
25 public in a speedy trial. This order of exclusion is made

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1 pursuant to 18 U.S.C. Section 3161(h)(7)(A).

2 I also know that there is a motion to dismiss that is
3 pending, and at that some point I will hear argument on that
4 motion to dismiss.

5 Okay. Anything further?

6 MS. NICHOLS: Nothing for the government, your Honor.

7 MR. MUKASEY: Nothing for the defense. Thank you,
8 Judge.

9 THE COURT: Okay. Good afternoon all.

10 (Adjourned)

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