

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

**STATE'S MEMORANDUM IN
SUPPORT OF MOTION FOR
CONTINUANCE OF TRIAL**

v.

Derek Michael Chauvin,

J. Alexander Kueng,

Thomas Kiernan Lane,

Tou Thao,

Court File No.: 27-CR-20-12646

Court File No.: 27-CR-20-12953

Court File No.: 27-CR-20-12951

Court File No.: 27-CR-20-12949

Defendants.

INTRODUCTION

The State moves for a continuance of the trial until Monday, June 7, 2021. The U.S. Food and Drug Administration recently provided Emergency Use Authorizations for two COVID-19 vaccines. Emanuel Aff. ¶¶ 23-24. In light of this development, the State believes that moving the start of this trial to June 2021 would reduce the public health risks associated with conducting the trial during the COVID-19 pandemic, and would also reduce the likelihood that the trial will be disrupted by COVID-19 cases among court staff, lawyers, jurors, and witnesses.

Although the State stands ready to try this case on the current trial date of March 8, it believes that a three-month continuance is in the best interests of public health. The State is confident that the Court has established appropriate protocols to reduce the risk of COVID-19 transmission in criminal trials conducted in Hennepin County. Nonetheless, this high-profile trial is unique, and it poses unique public health risks. The trial will involve a larger-than-usual number

of participants, including four Defendants, their counsel, and dozens of witnesses. It is likely to be the subject of large public demonstrations, which may increase the risk of community spread of COVID-19. And the costs of a COVID-related interruption of the trial are likely to be far higher here than in an ordinary trial. In light of these risks, the State believes that a three-month continuance is appropriate. Such a continuance would “substantially lower” the risks of COVID-19 transmission at trial, as “it is likely that tens of millions of Americans—if not 100 million Americans—will receive vaccinations in the three months between March 2021 and June 2021.” *Id.* ¶ 38. The State therefore respectfully requests that the Court grant the motion.

ARGUMENT

The State has met the standard for granting a continuance of the trial. Minnesota law provides that “[a] continuance may be granted by the court . . . upon motion of either the prosecution or defense,” so long as the movant “show[s] sufficient cause for the continuance.” Minn. Stat. § 631.02. Here, there is “sufficient cause”: A three-month continuance of the trial is plainly warranted in light of the FDA’s recent Emergency Use Authorization for two new COVID-19 vaccines, which by June 2021 will substantially reduce the public health risks associated with conducting this high-profile trial during a pandemic.

A. As Dr. Ezekiel Emanuel, a world-renowned public health expert and member of President-elect Biden’s Coronavirus Advisory Board, explains in his affidavit, the FDA provided Emergency Use Authorization for two new COVID-19 vaccines in December 2020. *See Emanuel Aff.* ¶¶ 23-24. Other COVID-19 vaccines are in clinical trials and may be given Emergency Use Authorization by the FDA as early as January 2021. *See id.* ¶¶ 25-26.

Dr. Emanuel has explained, however, that these vaccines are unlikely to be available to the general public by March 2021: “At the time the trial in this case is scheduled to begin . . . , very

few members of the general public will have had the opportunity to receive a COVID-19 vaccine.” *Id.* ¶ 36. At that point, “it is likely that only health care workers, residents of long-term care facilities, Americans over age 75, and a few essential workers will have been vaccinated.” *Id.*

Nonetheless, Dr. Emanuel estimates that “it is likely that the COVID-19 vaccine will begin to be available to some individuals in the general population starting in late spring 2021.” *Id.* ¶ 33. Based on this timeline,¹ Dr. Emanuel notes that “millions of Americans in the general population” are likely to “receive a COVID-19 vaccination between March 2021 and June 2021.” *Id.* ¶ 34. Indeed, Dr. Emanuel suggests that “it is likely that *tens of millions* of Americans—if not *100 million* Americans—will receive vaccinations in the three months between March 2021 and June 2021.” *Id.* ¶ 38 (emphases added); *see id.* ¶¶ 26 (noting that Johnson & Johnson expects to ship enough vaccine doses by June 1 to vaccinate 90 million people, and that 80 million of those doses will be shipped between March 1 and June 1). Dr. Emanuel also notes that “as more people gain immunity through a vaccine, it becomes less likely that COVID-19 will be transmitted, both to people who have received the vaccine and those who have not.” *Id.* ¶ 35. As a result, “the risk of community spread of COVID-19 in June 2021 will be substantially lower than in March 2021.” *Id.* ¶ 38. Dr. Emanuel has thus concluded that “large public gatherings—including those conducted with proper social distancing and mask protocols—will be substantially safer in June

¹ The Minnesota Department of Health (MDH) anticipates a similar timeline for COVID-19 vaccinations in Minnesota. Kris Ehresmann, the Director of the MDH Infectious Disease Epidemiology, Prevention, and Control Division, was recently described as explaining “that the ‘average Minnesotan’ – people who don’t fall into a high risk health category or a priority category such as health care workers and first responders – should anticipate getting vaccinated in late spring or early summer.” MPR News Staff, *Latest on COVID-19 in MN: 66 More Deaths; 2K New Cases*, Minn. Pub. Radio News (Dec. 30, 2020), <https://www.mprnews.org/story/2020/12/30/latest-on-covid19-in-mn>; *see also* Glenn Howatt, *Minnesota Prepares For Next Wave of COVID-19 Vaccinations*, Minneapolis Star Trib. (Dec. 30, 2020), <http://strib.mn/3aUdWYt>.

2021, after many Americans have had an opportunity to obtain a vaccine, than in March 2021.” *Id.* ¶ 39.

B. Because the risk of COVID-19 transmission will be “substantially lower” in June 2021 than in March 2021, *id.* ¶ 38, there is “sufficient cause” for a three-month continuance, Minn. Stat. § 631.02. Commendably, this Court has taken appropriate measures to protect the safety of trial participants and minimize the public health risks of conducting trials during a pandemic. And it has successfully conducted criminal trials during the pandemic using those safety protocols. Nonetheless, Dr. Emanuel has explained that—even with such protocols in place—“an in-person trial in March 2021 that attracts a large number of people who are indoors for prolonged periods of time with public speaking is likely to create a substantial risk of COVID-19 transmission,” and “could even become a superspreader event.” Emanuel Aff. ¶ 36. Indeed, the high-profile nature of this case—as well as the larger-than-usual number of trial participants, including four Defendants, their counsel, and dozens of witnesses—could mean that many people will congregate in and around the Hennepin County Government Center during trial, thereby posing a higher threat of COVID-19 transmission than the typical criminal trial in Hennepin County. An in-person trial in March 2021 therefore may place “court staff, lawyers, witnesses, jurors, media, and members of the public assembled at the courthouse” at greater risk than the typical trial. *Id.*

Moreover, if any trial participants contract COVID-19 during the trial, it is also likely that the trial will need to be delayed, as those who came into contact with the infected person may need to quarantine. Such delays have already occurred in other trials conducted in Minnesota and elsewhere, and have in some instances resulted in mistrials. *See, e.g., Bloomington Mosque Bombing Trial Postponed After Juror Tests Positive for COVID-19*, Fox 9 KMSB (Nov. 16, 2020), <https://www.fox9.com/news/trial-for-bloomington-mosque-bombing-postponed-after-juror-tests->

positive-for-covid-19 (federal criminal trial in Minnesota postponed two weeks after a juror contracted COVID-19); Katie Buehler, *COVID-19 Outbreak Leads to Mistrial in EDTX*, Law360 (Nov. 17, 2020), <https://www.law360.com/articles/1329617> (federal court in Texas declared mistrial after 15 trial participants—including two jurors, three members of the defense team, several members of the plaintiffs’ team, and five court staffers—contracted COVID-19). And the costs associated with a COVID-related trial interruption are likely to be higher here than in an ordinary trial. Because of the complexity of this case and likely length of the trial, it may be more difficult for jurors to remember the testimony of all relevant witnesses and experts if the trial is delayed due to COVID. And because of the high-profile nature of this case, it may be difficult to insulate the jury from media coverage during any lengthy COVID-related interruption of the trial.

A three-month continuance would reduce the likelihood that the trial will be disrupted or delayed by a positive COVID-19 test among the trial participants, as the risk of COVID-19 transmission will be “substantially lower” by June 2021. *See Emanuel Aff.* ¶¶ 38-39. Such a continuance would also increase the likelihood that jurors would feel comfortable serving on the jury, potentially increasing the size of the jury pool and ensuring that the jury represents a fair cross-section of the community. *See, e.g., United States v. Davis*, No. CR 20-MJ-00140-KMT, 2020 WL 5653332, at *2 (D. Colo. Sept. 18, 2020) (delaying trial because it would help ensure that the court could “obtain[] an adequate cross-section of the community for jury selection”); *see also, e.g., United States v. Sullivan*, No. 3:20-CR-00337-WHO-1, 2020 WL 5944433, at *3 (N.D. Cal. Oct. 7, 2020) (“If particular demographic groups face disproportionate hardship from the pandemic, . . . those groups might then be systematically less likely to serve as jurors.”). And it would reduce the risk to the general public: If, as expected, there are large public demonstrations in Minnesota and elsewhere during and after the trial, holding this trial in June instead of March

would decrease the “substantial risk of COVID-19 transmission within the community.” Emanuel Aff. ¶ 37; *see id.* (noting that COVID-19 transmission is also more likely in “cold, dry air”).

A three-month continuance also appropriately balances the need to protect public health with the need to ensure that this case is resolved expeditiously. In the interests of obtaining justice for George Floyd and his family, and in the interests of fairness to the Defendants, the State believes that this case must be resolved promptly. The State thus does not believe that a lengthier continuance is appropriate, or that the Court should delay the trial until the end of the pandemic. A short, three-month continuance, however, would not prevent this case from being resolved promptly, as it would still ensure that this trial begins approximately one year after the State first charged the four Defendants in connection with George Floyd’s death. And it would substantially reduce the risks to trial participants from COVID-19, and thereby reduce the risk that this trial is delayed or disrupted by a COVID-19 outbreak among the trial participants. *See supra* pp. 4-5.

Finally, Defendants would not “suffer legally recognizable prejudice” from a continuance until June 2021. *State v. Stroud*, 459 N.W.2d 332, 335 (Minn. Ct. App. 1990). Defendants Chauvin and Thao have already requested a continuance of the trial, albeit on other grounds.² Def. Chauvin Notice of Mot. and Mot. for Continuance 1 (Dec. 14, 2020); Def. Thao Mot. for Sanctions and Hearing Regarding Discovery Violations by the State 1 (Dec. 11, 2020) (requesting continuance until July 2021). Moreover, even with a three-month continuance, this complex, high-profile case involving four Defendants would proceed to trial just one year after Floyd’s death—an expeditious pace by any measure. All of the Defendants also have been released on bond and

² The State opposes Chauvin’s and Thao’s motions for a continuance to the extent they are predicated on allegations of discovery violations by the State. As the State has explained, the State has not violated its discovery obligations. *See State’s Response to Def. Thao’s Mot. for Sanctions and Hearing Regarding Discovery Violations by State* (Dec. 18, 2020).

are not currently in custody, so a short continuance of the trial would not increase the length of time the Defendants spend in custody. In these circumstances, a continuance would not prejudice the Defendants.

In short, a three-month continuance would substantially reduce the public health risks of conducting this trial, would decrease the likelihood that a COVID-19 outbreak at trial might delay or disrupt the trial, and would not prevent this case from being resolved expeditiously. The Court should therefore grant this motion and continue the trial until Monday, June 7, 2021.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the trial in this case be continued until Monday, June 7, 2021.

Dated: December 31, 2020

Respectfully submitted,

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