

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

_____)	
United States of America,)	
)	
Plaintiff,)	
)	Case No: 2:23-cr-00010-HCN
vs.)	
)	
Plastic Surgery Institute)	
of Utah, et al.,)	
)	
Defendants.)	
_____)	

**STATUS CONFERENCE VIA ZOOM BEFORE THE
HONORABLE HOWARD C. NIELSON, JR.**

Date: June 4, 2025

Time: 1:00 p.m. to 2:40 p.m.

Reported by Teena Green, RPR, CRR, CBC

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June 4, 2025

1:00 p.m.

P R O C E E D I N G S

THE COURT: All right. Good afternoon. We're here for a status conference in *United States v. Plastic Surgery Institute of Utah, et al.* That's Case No. 2:23-cr-10. The purpose of this hearing is to address Dr. Michael Kirk Moore's and Kristin Jackson Andersen's motion to continue the trial.

Let's start with appearances of counsel for the record, though.

First, counsel for the United States.

MR. BOUTON: Good afternoon, Your Honor. Todd Bouton, Jacob Strain, and Sachiko Jepson for the United States of America.

THE COURT: Are all three of you here?

MR. BOUTON: Yes.

THE COURT: All right. Welcome, Mr. Bouton, Mr. Strain, and Ms. Jepson.

All right. Counsel for Plastic Surgery Institute.

MR. BARNHILL: Good afternoon. Brian Barnhill for Plastic Surgery Institute.

THE COURT: Welcome, Mr. Barnhill.

Counsel for Dr. Moore.

MS. NESTER: Good afternoon, Your Honor. Kathy Nester and David Drake here on behalf of Dr. Moore. And Dr. Moore is also present.

1 **THE COURT:** All right. Welcome, Ms. Nester.

2 Welcome, Mr. Drake. And, welcome, Dr. Moore.

3 **MR. DRAKE:** Thank you, Judge.

4 **THE COURT:** Okay. And then counsel for Ms. Andersen.

5 **MR. BRASS:** Good afternoon, Your Honor. Ed Brass
6 appearing for Ms. Andersen.

7 **THE COURT:** Welcome, Mr. Brass. It's good to see you
8 being able to be here.

9 **MR. BRASS:** Thank you. I actually really appreciate
10 that right now. Thanks.

11 **THE COURT:** Very good.

12 Do we have any counsel for any of the other
13 defendants?

14 **MS. ANGELOS:** Your Honor, Kris Angelos for Sandra
15 Flores.

16 **THE COURT:** All right. Welcome, Ms. Angelos.

17 Any other lawyers on the call, other than -- I have a
18 law clerk and some court personnel, but are there any other
19 representative of counsel that need to enter an appearance?

20 All right. Hearing none. Okay.

21 **MR. BOUTON:** Your Honor, I'm sorry to interrupt. I
22 would just draw to your attention that we do have Agent Ashley
23 Collins from HHS on the call.

24 **THE COURT:** Okay. Thank you.

25 Well, it would not be true to form in this case if we

1 didn't have a little bit of drama, so I guess I should not be
2 surprised. On November 26th, 2024, after I granted Dr. Moore's
3 motion to revoke the detention order that had been issued by
4 the magistrate judge, I granted Dr. Moore's motion to continue
5 the trial from January 2025 until this July, primarily because
6 counsel for Dr. Moore, David Drake, had some medical issues
7 scheduled and we wanted to facilitate his recovery, which would
8 have likely conflicted with the January 2025 trial date.

9 I issued -- then we proceeded on the understanding
10 that we'd go to trial in July. And I issued the trial order
11 for that trial just over a month ago, on May 2nd, 2025.

12 We now have a motion from Dr. Moore to continue the
13 trial. In support of his motion, counsel for Dr. Moore
14 represents that on May 21st, 2025, the prosecution disclosed
15 for the first time to defense counsel over 200 pages of
16 government contracts between the federal government and the
17 manufacturers of the vaccines.

18 Counsel for Dr. Moore argues that these documents are
19 relevant to Dr. Moore's defense because they shed light on
20 whether the vaccines shipped to Dr. Moore's office were federal
21 government property at the time of their disposal.

22 And counsel for Dr. Moore represents that additional
23 time is necessary to retain an expert to analyze the government
24 contracts and to determine who should be subpoenaed to
25 testify about these contracts and to serve trial or document

1 subpoenas on these out-of-state government officials.

2 Plastic Surgery Institute joins the request for a
3 continuance. Ms. Andersen also moves to continue the trial.
4 In addition to incorporating by reference the arguments made in
5 Dr. Moore's motion, counsel for Ms. Andersen represents that
6 additional preparation time would be welcome because of the
7 medical issues he's been dealing with since March 2025, which
8 rendered him physically unable to work on a full-time basis
9 from that date until the present.

10 Okay. That's my understanding of the motions before
11 me. I note as well that Dr. Moore filed a reply in support of
12 the motion yesterday, and then I believe it was this morning
13 the government filed a sur-reply.

14 Let's see. I'd like to hear from you all on these
15 motions, but I guess I'd like to start by asking the government
16 some questions about these documents that seem to have, you
17 know, caused -- or at least are the stated reason for the
18 request for continuance.

19 Now, based on the government's response, my
20 understanding is that the government intends to use the vaccine
21 contracts to establish the price of the vaccines, not whether
22 the government owned the vaccines when Dr. Moore allegedly
23 disposed of them.

24 Am I right about that, Mr. Bouton, or whoever wants
25 to speak for the United States?

1 **MR. BOUTON:** Yes, Your Honor. I don't know if you
2 had time to review the sur-reply that was filed.

3 **THE COURT:** I did. Briefly, but I did.

4 **MR. BOUTON:** So, yes, that was the purpose. We had
5 determined in trial preparation that our former CDC witness
6 could not testify to the exact pricing of the vaccines, and so
7 we scrambled to find a witness who could do so. It took some
8 time and we were able to find one that was identified on
9 May 15th, I think four days before we had to exchange witness
10 lists.

11 We spoke to Dr. Disbrow, he's a Ph.D, on the next
12 day, the 16th, the Friday before that deadline for the first
13 time and confirmed that he could testify to this. But he
14 indicated that he would need to use these contract documents to
15 do so to support his testimony and to be sure he had the right
16 numbers.

17 We received them for the first time on May 19th. And
18 we indicated in our exhibit list that they would be forthcoming
19 under seal the next day after we had worked the issue out with
20 ASPR, who produced them. We turned them over on May 20th. It
21 was less than 24 hours that we had them in our possession
22 before they went to the defendant.

23 **THE COURT:** All right. Well, I'm not really
24 interested in argument just yet, I'm really just interested in
25 the answers to my question. Okay, and you've answered that, so

1 it's price.

2 So I guess my next question is, if these contracts
3 are only to establish price, what evidence or testimony will
4 the government offer to prove beyond a reasonable doubt that
5 the vaccines were federal government property when Dr. Moore
6 allegedly disposed of them?

7 **MR. BOUTON:** Most of that evidence, Your Honor, would
8 come through the CDC witness who was involved with the program
9 and Operation Warp Speed who can testify that the government
10 funded and obtained the vaccines and distributed them
11 exclusively through the CDC.

12 Evidence would also include the CDC COVID-19
13 vaccination program provider agreements, including the one
14 Dr. Moore and Ms. Burgoyne signed that indicate these were
15 being distributed pursuant to a collaborative agreement with
16 the Utah Department of Health and Human Services.

17 We would also have evidence from Mr. Lakin from the
18 Department of Health and Human Services. His first MOI was
19 produced last July, I believe, when we replied to the motion to
20 dismiss, and he talked about how the vaccines were ordered
21 through the CDC system and distributed directly to the
22 providers. The cards themselves were emblazoned with the HHS
23 and CDC logos.

24 **THE COURT:** No, I understand. And all of these
25 things, apart from the contract, it sounds like pursuant to --

1 maybe there's a question, pursuant to Rule 16, you identified
2 these witnesses and provided the relevant documents to the
3 defendants and as you kind of knew about them you intended to
4 use them. Is that right?

5 **MR. BOUTON:** Yes, Your Honor. The only thing new is
6 these pricing documents that we do just want to use to show the
7 pricing, assuming the defense will not agree that they're worth
8 at least a dollar. If they want us to prove the exact amount,
9 we will.

10 **THE COURT:** Okay. Now, I think before, and you
11 repeated it today, you indicated that the reason you did not go
12 forward with Mr. Duggar is that he lacked personal and accurate
13 knowledge so you replaced him. But I guess at that point, you
14 were not planning to use any contracts to verify or support his
15 testimony. Correct?

16 **MR. BOUTON:** Yes, Your Honor. We did not believe
17 that we would need this kind of documentation. We thought he
18 was capable to testify to the exact pricing. We interviewed
19 him and his numbers appeared off, and he admitted that he
20 wasn't certain what the exact pricing was. And so we had to
21 find someone who knew.

22 **THE COURT:** All right. And I guess my question -- so
23 you replaced him with Gary Disbrow?

24 **MR. BOUTON:** I'm sorry, Your Honor, just for that
25 issue.

1 **THE COURT:** Oh, so Mr. Duggar is testifying on other
2 issues, but just not about --

3 **MR. BOUTON:** Yeah, a lot.

4 **THE COURT:** Yeah, right. So this Mr. -- I guess you
5 called him "Doctor," if we're going to call Ph.D.s doctors,
6 whatever. Some of my Ph.D. friends say it stands for fake
7 doctor, Ph, you know, but regardless -- and, well, I won't
8 continue on that.

9 But I guess for -- you know, you testified
10 that Dr. -- or Mr. -- Gary Disbrow wanted to use these
11 documents. But does he have personal knowledge of the pricing?

12 **MR. BOUTON:** My understanding is he was involved in
13 the program and knew that they purchased them. I think he had
14 to rely on the documents to know the exact pricing. But he was
15 someone who was familiar with them and was involved in the
16 contract, I don't know if it's enforcement or the program, so
17 he had access to the documents. I believe he may have approved
18 some of them. But he had some involvement with them. He just
19 needed them to I guess refresh his recollection as to the exact
20 amount.

21 **THE COURT:** I guess --

22 **MR. BOUTON:** -- to rely on them is what he said.

23 **THE COURT:** I guess my question is that. I mean is
24 this a matter of where you would need them to refresh his
25 recollection or is it a matter where you'd be using him as the

1 foundation to get the contracts in and then relying on the
2 contracts for the price? I'm just trying -- it might make a
3 difference, and that's why I'm trying to understand exactly
4 what's going on here.

5 **MR. BOUTON:** Our intention, Your Honor, was just to
6 have him testify as to the pricing of the vaccines, what the
7 United States paid for them. He wanted to use the documents.
8 We would be comfortable not using them, if that is an issue.

9 **THE COURT:** I mean would you be comfortable -- I mean
10 does he have enough knowledge that you could ask him and, if he
11 didn't recall, you could just refresh his recollection with
12 them without introducing them into evidence? Do you think it's
13 that sort of thing, or do you think he actually would need -- I
14 guess the question is if he knew or knows, you could refresh
15 recollection; if he doesn't know and you actually need the
16 contracts to come in and he's just kind of providing foundation
17 for them. Those are potentially two quite different scenarios.

18 Do you understand what I'm getting at, Mr. Bouton?

19 **MR. BOUTON:** Yes, I think so, Your Honor. And that's
20 a difficult question. In my brief interactions with him, it
21 was strongly suggested that he would want to rely on them.
22 Could I show them to him? Has he gone through and already done
23 the review. Could I show them to him and refresh his
24 recollection so he could give us the exact number if it was
25 necessary to provide an exact number? Yes. I definitely think

1 it was his preference to use them. And so I'm not entirely
2 comfortable saying he would go forward without them.

3 **THE COURT:** Okay. No, I understand. I guess, I mean
4 in trying to understand the concerns voiced by Dr. Moore and by
5 the co-defendants, or some of the co-defendants, I guess -- I
6 mean I think part of the concern is there is -- I mean, in
7 these heavily redacted documents, there is language that talks
8 about title transfers, and things like that. There's
9 language -- I didn't -- there's clear language about that in
10 the Janssen contract. There's language about that in the
11 Pfizer contract, though one of the conditions that has to be
12 met is redacted.

13 The Moderna contract has language that deals with
14 title of some things, so it's not clear the Moderna language
15 covers the vaccines or not. And I guess the concern -- again,
16 I don't want to put words in the defendants' mouth.

17 I guess, you know, one concern would be if you are
18 intending to use these contracts to establish ownership or
19 transfer of title from the pharmacies to the government, number
20 one, they're not complete on that issue; and number two, it's
21 kind of a new thing that, you know, is kind of out of the blue.

22 If it's just the issue that you've talked about
23 before pricing, I guess one of the things I was trying to get
24 at is, you know, if you replaced Mr. Duggar on this issue
25 because he didn't have personal knowledge, presumably you were

1 looking for someone who did have personal knowledge, so why do
2 you need the documents?

3 And then I guess if it's just the pricing
4 information, you know, why do you need all of 200 pages? I
5 mean the pricing information is a fraction of that.

6 **MR. BOUTON:** I would agree, Your Honor, that we
7 don't. We think very few pages in those documents are
8 relevant. We just wanted the information as to pricing and
9 they gave us more than I thought we really needed. But we
10 disclosed everything we received because we felt we had to.

11 **THE COURT:** Sure. Sure.

12 **MR. BOUTON:** I do think there are only a few pages
13 that are relevant to the pricing issue, Your Honor.

14 **THE COURT:** All right. I understand. Okay. I guess
15 I'd like to -- those were the questions I had to try and just
16 understand what was going on here. I mean, as far as you're
17 concerned, your need to use the documents is just driven by
18 your witness's desire to rely on them?

19 **MR. BOUTON:** Yeah.

20 **THE COURT:** If he felt like he had personal knowledge
21 just to testify to the pricing and he didn't need them, you
22 would be comfortable relying on his testimony?

23 **MR. BOUTON:** Yes.

24 **THE COURT:** Okay. And presumably, you know, if he
25 were able just to use them just to refresh recollection without

1 them being entered into evidence, you'd be comfortable with
2 that?

3 **MR. BOUTON:** Yes, we would, Your Honor.

4 **THE COURT:** And if defense consented, because -- and
5 I mean there's issues with rule of completeness and stuff, you
6 would be willing to, you know, rely on just the portions of the
7 document that just --

8 **MR. BOUTON:** Yes, Your Honor, dealt with pricing.

9 **THE COURT:** All right. I guess with that, I'd like
10 to give counsel an opportunity to be heard further on the
11 motions.

12 Ms. Nester, I guess you filed your motion first,
13 before Mr. Brass, so I'll let you speak first, or your
14 colleague, if you want.

15 **MS. NESTER:** Thank you, Your Honor.

16 **THE COURT:** I've read your motion and your reply
17 brief. You don't need to belabor everything you said, but --

18 **MS. NESTER:** Sure. So, first, I certainly accept
19 Mr. Bouton's representations that he disclosed the documents
20 right away. These are officers of the court, I know them to be
21 ethical people. I don't question that they're not being
22 truthful about that.

23 The problem is that the document doesn't just serve
24 the purpose of establishing pricing, which just -- I know if
25 Your Honor even had a chance to glance at them, there are no

1 individual prices listed. So I guess they're going to do math
2 and try to figure out how many vaccines they bought and the
3 total they paid these pharmaceutical companies, and come up
4 with some formula to figure out what the value per vaccine was.

5 I mean there could be an argument that that was a
6 service contract, not purchasing price of the product, the way
7 I read it. But I mean, again, I'm just going to fess up that I
8 am not a contract lawyer. I am certainly not a government
9 contract lawyer. I barely passed contracts in law school.

10 I have looked at it to the best of my ability. It
11 appears to me to have common UCC -- what I vaguely recall in
12 the back of my brain about the UCC from law school, that it has
13 the freight-on-board type language in there. I guess you saw
14 it as well because you just referred to it. And that may play
15 an important role to the defense.

16 So I appreciate that they only want one thing out of
17 that document, but I think there's issues in that document that
18 are helpful to the defense in terms of exactly who had a
19 possessory interest in these products at the time they were
20 delivered to Dr. Moore's door, which is going to be a key
21 element of the case, and pricing is going to be a key element
22 of the case. We're certainly not going to stipulate to a key
23 element of the crime needed to convict our client.

24 I do question how this individual, either Duggar or
25 Disbrow, are going to talk about things that they've heard the

1 government did through hearsay. I certainly will object to
2 that. I know you can see that on the horizon. But I assume
3 they'll figure out a way around that, or they'll try.

4 But my concern is this. I thank them for disclosing
5 this. It absolutely was their duty to disclose it. I talked
6 about these documents with Mr. Strain two years ago when I was
7 first on the case. We talked about the need to have to look at
8 these contracts.

9 So we've all known that -- you know, that this is a
10 complicated issue about who possessed and owned this property.
11 That's what this whole case is going to come down to. And I
12 just need time to go get a contract lawyer who's smarter than
13 me that works at a fancy firm that makes more than me to read
14 these things, tell me what they say in terms of the UCC
15 terminology, because I don't know that, help me understand.

16 And I may want to litigate some of these redactions.
17 Because here's my problem. You know, I'm not going to
18 stipulate to the authenticity of these documents. And they've
19 redacted every signatory to the document, so I don't even know
20 how to call or interview people to question whether these are
21 the original versions, whether this is the final, final, final
22 version, if there have been amended versions. I can't even
23 follow up on that because they've redacted who the signatories
24 are.

25 So all I'm saying is, Your Honor, you know, we were

1 pushing to trial, my client wants this over with as much as
2 anybody does. But it is more important to try this case fairly
3 than quickly. And at this point, we've had a major
4 introduction of issues that require expert investigation. And
5 I simply don't have time before July, especially not under the
6 terms of your court order.

7 **THE COURT:** All right.

8 **MS. NESTER:** That's it.

9 **THE COURT:** Okay. Thank you, Ms. Nester.

10 All right. Mr. Brass, would you like to be heard on
11 the motions at all? Again, I've read your motions, so you
12 don't have to --

13 **MR. BRASS:** No. I have nothing to add, Your Honor.
14 Thank you, thank you for the opportunity.

15 **THE COURT:** Okay. Let me do ask you this, though. I
16 mean, are you -- I mean, obviously, especially if we get into
17 the issues -- apart from the issues that Ms. Nester has raised
18 with these contracts, do you feel like you're going to be up to
19 trial in July, first of all?

20 **MR. BRASS:** I believe that based on how I feel today.
21 I don't feel great today, to be honest with you. This is an
22 interesting condition I've never had in my life, but I improve
23 every single day, so I anticipate by July I'd be just fine.

24 **THE COURT:** Right. And leaving aside this -- you
25 know, what Ms. Nester characterized as a new issue, do you

1 feel, apart from that, that you don't have enough time to
2 prepare?

3 **MR. BRASS:** No, I think I do.

4 **THE COURT:** Okay. All right. Thank you.

5 Okay. And would counsel for -- I guess it's
6 Mr. Barnhill for Plastic Surgery.

7 Would you like to be heard on it?

8 **MR. BARNHILL:** I'd just join Ms. Nester's same
9 arguments. I looked at the contracts as well. I tried to make
10 sense of the documents. And to her point, whether they're
11 amended or whether they're final, who the signers were, I
12 couldn't decipher from the documents themselves who I would
13 need to speak with.

14 And I join in the fact that there are a lot of issues
15 that are raised within the contracts that I feel like I need to
16 have a better understanding of what the arrangement was on the
17 ownership, and was it -- were they conveyed to Utah for their
18 distribution or -- since it's so redacted, there was no flow to
19 reading through the documents to even try to decipher what was
20 trying to be conveyed in the documents.

21 So I'd just join in her arguments. I think these are
22 important issues that we need time to address and talk to some
23 of the witnesses that could provide foundation, provide
24 personal knowledge.

25 **THE COURT:** All right. And Ms. Angelos, I assume

1 your client, Ms. Flores, doesn't really have a dog in this
2 fight, but do you have anything to say?

3 **MS. ANGELOS:** No, Your Honor. That's correct, we do
4 not have a dog in this fight.

5 **THE COURT:** All right. Okay. And I guess I'll
6 give -- Mr. Bouton, I'll give you a chance to respond.

7 As I said before, I mainly was interested in your
8 answers to the questions, but now I don't know if you want to
9 speak more broadly to kind of the arguments that are being
10 made. I welcome hearing what you have to say.

11 **MR. BOUTON:** Thank you, Your Honor.

12 For Sandra Flores, I do think there is an issue that
13 wasn't addressed in the briefs, that she has a diversion
14 agreement, which I believe was set to expire at the end of next
15 month. So a continuance could affect -- I'm unclear as to the
16 enforceability, what happens after 18 months, when she's
17 complied, to what extent she is still bound by her obligations
18 to cooperate that underlie the agreement. So a continuance
19 beyond where the case is currently set could have implications
20 for her testimony. So I do think there is a concern about
21 Ms. Flores, even though Ms. Angelos may not have thought about
22 that.

23 I don't know if she wants to respond to that, before
24 I move on.

25 **THE COURT:** Do you have anything off the top,

1 Ms. Angelos, or is that something you'd need to think about?

2 **MS. ANGELOS:** Your Honor, as I read the diversion
3 agreement, it will be done in 18 months, which will be at the
4 end of July. I don't anticipate that it is going to affect
5 Ms. Flores's testimony or her testifying. And I anticipate if
6 the diversion agreement is complete and she is off and the case
7 is dismissed, that the Government will still have perjury or
8 obstruction charges if she doesn't testify truthfully. So I
9 don't necessarily think it affects it, but I understand the
10 government has concerns.

11 **THE COURT:** Okay. Understood.

12 All right. Why don't you continue, Mr. Bouton.

13 **MR. BOUTON:** Thank you, Your Honor.

14 Ms. Nester has suggested that the contracts don't
15 show the numbers clearly, but I think they do. If you look at
16 the final NFP pricing for Janssen on page 1, it says "Price per
17 regimen of 750."

18 On Pfizer, on page 6, it lists the kinds of vaccines
19 and their per-unit amounts, 24, 35, 24, 10, 24, 10, whatever
20 they are.

21 And on the Moderna document, on pages -- I think
22 starting at page 3, it lists a unit price, which is the
23 per-vaccination price. That is backed out of the larger
24 amount, but it is pretty clearly and cleanly identified.

25 And these are the documents that Mr. Disbrow

1 indicated he used to confirm the pricing. So I do think the
2 pricing can be clearly identified without using all of the
3 pages. I was frankly surprised to get 53 pages. I thought
4 they were only going to give me -- fewer, because they were --
5 they had concerns about the confidentiality of the agreements,
6 and they still do. I believe the Court is probably aware that
7 we filed a motion to seal and propose an alternative of them
8 testifying that it's over a dollar or just to the amount
9 because ASPR -- what is it, the Administration or Agency for
10 Strategic Preparedness -- was concerned about publicly
11 identifying the exact amounts even in trial, which we explained
12 to them may be necessary. So I do think you can use just a few
13 pages of these documents to get the pricing information.

14 Now, as to whether this is fair, right, or the Speedy
15 Trial Act would authorize a continuance, I think the answer is
16 no. Because there would have -- the defense would have to show
17 that they had exercised due diligence in pursuing this issue.

18 And the issue that they say they want to use these
19 extraneous parts of the contracts for is the issue of whether
20 the property at issue, the vaccines and the vaccination record
21 cards belong to the United States.

22 Well, that's not a new issue. That's something the
23 defense admits they raised two years ago that they had concerns
24 about. It's an issue they specifically vetted and litigated
25 starting last July in their motion to dismiss, where one of

1 their main arguments on page 1 was, "Counts 2 and 3 must be
2 dismissed because the property that the defendant is accused of
3 converting," meaning the vaccines and cards, "did not belong to
4 the federal government at the time." They argued they instead
5 belonged to the State of Utah.

6 So they had been exploring this theory and
7 researching it and litigating it and arguing it. It came up at
8 the hearing on October 18th. And when the Court initially
9 indicated it would continue the trial to July 7th, seven or
10 eight months ago, Mr. Bronster, who was representing Dr. Moore,
11 along with Mr. Drake at the time, indicated he would need more
12 time to conduct discovery and to interview witnesses. And the
13 Court indicated, "You should get on it if you need discovery
14 and you anticipate it." Your Honor anticipated it would be
15 done by April 21st before the status conference, and it doesn't
16 look like they've done it.

17 If they had really thought there was something to
18 this defense, which they had already raised and have known
19 about for over two years, they would have sought the discovery.
20 I don't believe it's an excuse to say, "Well, we think because
21 it's confidential now, a FOIA request would have been
22 ineffective." Well, it doesn't look like one was made. And if
23 one had been denied and they really were pursuing this because
24 they believed it was a viable defense, they would have come to
25 the Court, to Your Honor, and tried to compel the disclosure.

1 The fact that these documents have some other
2 language about an issue we haven't raised doesn't resurrect or
3 excuse the failure to pursue this for months and months, if not
4 years. So I don't believe -- the United States does not
5 believe that the defendants have exercised due diligence or can
6 show due diligence in pursuing this theory.

7 The United States is not suggesting they haven't been
8 diligent in preparing for trial, litigating this case. They
9 thoroughly vetted the necessity defense. They're getting
10 ready. They've had time. They're very competent and
11 experienced. It looks like they just chose not to look into
12 this and now this is an excuse for one more trial continuance,
13 which would be, at a minimum, a fifth.

14 I mean there were two other times when the trial was
15 continued and just set for a status conference and not set. So
16 arguably, this would be the seventh trial continuance, based on
17 the theory that they've had time to explore, would be our
18 position, Your Honor.

19 **THE COURT:** Understood. How are you going to get
20 this in at trial, just out of curiosity?

21 **MR. BOUTON:** To get what in, Your Honor?

22 **THE COURT:** The documents in. It sounds like the
23 defense is not going to stipulate anything in terms of
24 (inaudible).

25 **MR. BOUTON:** The intent that we believe that

1 Mr. Disbrow can authenticate them based on his position at the
2 agency and familiarity with them that show that they're real,
3 that these are actual pricing documents, agreements between the
4 United States and the manufacturers.

5 **THE COURT:** Okay. So --

6 **MR. BOUTON:** And they accurately reflect the pricing.
7 He would say that.

8 **THE COURT:** Yeah, so he can authenticate them in that
9 respect. Understood. Okay.

10 **MR. BOUTON:** That would be our intention, Your Honor.

11 **THE COURT:** All right. Okay. Thank you, Mr. Bouton.
12 Ms. Nester, do you want to respond to any of that, or
13 reply, I guess?

14 **MS. NESTER:** Super briefly to something Mr. Bouton
15 said.

16 So we did not know that the military was who did the
17 deal with the pharmaceutical companies until we got these
18 contracts. So my client did submit a FOIA seeking the original
19 documents for the origin of the purchase of the vaccines and
20 was told it would take 18 months. But it wouldn't have worked
21 because we did not know -- I don't think the United States
22 generally knows that the military was the one who did this
23 contract.

24 So we would not have even had the knowledge to submit
25 it to the right agency. We were trying to get it through the

1 Department of Health and Human Services, which is wrong. So I
2 mean that's a closely-held fact that none of us knew. And I'd
3 bet, you know, Mr. Bouton and Mr. Strain and Ms. Jepson may not
4 have known that either until they saw these contracts, because
5 that's not publicly known.

6 So I just want to make sure you don't think that we
7 were failing to -- I mean there's no way we could have gotten
8 this, even on our very best day of advocacy. And I think they
9 would have been denied to us anyway. They've been redacted in
10 the form they've been given to us. So I just want to make sure
11 the Court's aware of that.

12 And I think that while it's true we've had this
13 they're since the beginning, we haven't had these documents
14 until now. So that's the position we're in.

15 So that's all I have.

16 **THE COURT:** And just to be clear, by (inaudible) is
17 this -- Mr. Bouton has mentioned the name of the agency or
18 the --

19 **MS. NESTER:** It's the Department of Defense that
20 entered into the contract with the pharmaceutical companies, it
21 was the military.

22 **THE COURT:** Where are you getting that from?

23 **MS. NESTER:** At the very top of the contract, at the
24 top of it.

25 **THE COURT:** Which one, the Pfizer one? There's

1 three.

2 **MS. NESTER:** I think it's on all of them, if I
3 remember correctly. I don't have them right in front of me,
4 but, yeah, these are military contracts. Which is one of the
5 reasons they want this confidential, because I don't think they
6 want people to know that, for whatever reason, I don't know.
7 And I don't think military documents are even covered by FOIA,
8 as far as I understand it. I don't think I can send a FOIA
9 request and ask for our nuclear plans against Russia.

10 **THE COURT:** So there's an attempt to redact, for
11 sure. But I guess I'm trying to --

12 I'm trying to see what it is in the contracts that
13 you're looking at. I'm not saying you're wrong. I'm just
14 trying to see what it is you're looking at.

15 **MS. NESTER:** So I think that even the Government's
16 motion conceded it, because that's one of the things they did
17 not want to come out in trial. I mean maybe it was on an
18 e-mail that I got or on the motion, but the Government's
19 specifically trying to protect that from disclosure, so I think
20 they would concede it.

21 **MR. BARNHILL:** Your Honor, I can point you to page 5
22 of the Janssen contract, it's the first one I pulled up.
23 Page 5 identifies the agreement is entered into between the
24 United States of America, represented by the Department of
25 Defense, contracting (inaudible) New Jersey. Advanced

1 Technology International is a consortium management firm of
2 the --

3 **THE COURT:** Yeah, I see that. Yeah. Okay. Thank
4 you.

5 Okay. Sorry, I interrupted you, though, Ms. Nester.

6 **MS. NESTER:** That's it. That's all I think I want to
7 respond to.

8 **MR. DRAKE:** Judge, I had a question, if I may be
9 heard. If not, I know Kathy's been designated as the
10 representative for Dr. Moore.

11 **THE COURT:** It's a status conference. If you have
12 something to ask, you can do it.

13 **MR. DRAKE:** Judge, at the time these documents were
14 presented to the witnesses for their recollection -- or, excuse
15 me, to refresh a recollection or for authentication (inaudible)
16 be in a redacted form because at some time the problem we've
17 all had with looking at these documents is they're so heavily
18 redacted. There are a number of ways judicially that we could
19 get around redaction, such as non-disclosures, sealing. But
20 I'd like to see the documents in full. Because under *Brady* and
21 rules of procedure, anything that's mitigating to the defendant
22 should be disclosed. And we can't tell what's mitigating to
23 the defendant. But I'm sure there are because the documents in
24 question involve ownership.

25 And so my first question is, I (inaudible) but my

1 first question is, how would these be presented to the witness?
2 And, secondly, we, as defendants' attorneys, need to be able to
3 see the portions that are redacted. And, you know, so if
4 there's some way judicially that we could do that, in camera,
5 whatever, we could come up with something.

6 **MS. NESTER:** And if you notice, we're not objecting
7 to the Government's -- sorry, my last trial was in state so I
8 keep wanting to say state. And when I'm in the state, I say
9 government. I can't stop myself. But we're not going to
10 object to their request to seal it from public view as needed
11 for our country's security. We're not going to be unreasonable
12 about that.

13 **THE COURT:** Yeah. I know it is unusual to have
14 documents at trial -- well, it's unusual to have documents at
15 trial that are redacted at all, but it's especially unusual to
16 have ones that are redacted in a form that -- I mean Mr. Bouton
17 represents that he doesn't even have the non-redacted -- and
18 counsel doesn't even have access to -- I mean even in the case
19 of classified information, there's special procedures and so
20 forth to govern that. And we don't generally allow things to
21 go forward to trial without -- with redactions, even for
22 national security stuff that's classified.

23 Do you want to speak to that, Mr. Bouton?

24 **MR. BOUTON:** Yes. I mean looking at page 5 of this
25 document, it does indicate the agreement is entered in between

1 the United States of America and they're represented by the
2 Department of Defense. My understanding, consistent with the
3 interview of -- the most recent interview of Chris Duggar, is
4 that this was part of Operation Warp Speed where general -- I
5 don't know if it was Milley -- the general was in charge of
6 running it and funding the development of the vaccines and then
7 the purchase and controlling the distribution of them.

8 So it's not surprising to me that there would be
9 reference to the DOD or the Department of Defense in here. But
10 I think the language that's cited by the defendants indicates
11 it is an agreement between the United States, they're just
12 acting through a particular agency to do the deal.

13 That said, it's not our intent to use this to prove
14 it belongs to the United States of America, although I think it
15 would help do that. It really was just to have competent
16 testimony as to the pricing that is apparently in dispute.

17 **THE COURT:** Yeah. Yeah. Well, I'm not -- I don't --
18 I mean, I don't know. You raise an interesting issue,
19 Ms. Nester. I mean I don't want to -- I guess there's a
20 small -- I guess there's a possibility I'm mistaken on this,
21 but I'm pretty sure DOD is not exempt from FOIA. I think there
22 are specific exemptions for FOIA for things like national
23 security and military information that are probably more likely
24 to be invoked by the Department of Defense and many other
25 agencies. But, you know, I mean my -- I almost -- I spent time

1 at DOJ at times when these issues matter, and I'm pretty sure
2 I've seen FOIA issues come up through DOD. But, again, it's
3 been a long time so I wouldn't want to swear to that. But I
4 don't think there's a categorical exception for DOD, I think
5 they're subject to FOIA same as other agencies, though FOIA
6 does have a number of exemptions that, you know, can cover
7 sensitive military sorts of things.

8 But am I wrong about that, Mr. Bouton, or do you
9 know?

10 **MR. BOUTON:** I do not know, Your Honor. I haven't
11 tried to issue a FOIA request to the DOD.

12 **THE COURT:** Yeah. Yeah. Okay. Well, I -- go ahead.

13 **MR. DRAKE:** I'm sorry. There's one other thing. And
14 I didn't mean to interrupt. I'm sorry.

15 There's one other thing. In looking over these
16 documents, and as Mr. Barnhill said and Ms. Nester, we think
17 that these documents also contain evidence that we're seeing
18 now. We're seeing this for the first time, but there's enough
19 of a hint there that we see that these documents may show
20 mitigating circumstances for our client, in that the origin of
21 the vaccine and the government dispossessed themselves of the
22 vaccine and these contracts and this sort of thing. So I think
23 these contracts that were just given to us by the Government
24 are going to be helpful for us. And on that basis, I'd like to
25 assert -- reassert on our motion for continuance, because if

1 they do in fact do that, then I think we're entitled to go
2 through that and use them for ourselves.

3 **THE COURT:** So I'm trying to understand. You said on
4 that basis you want to reassert your motion to continue?

5 **MR. DRAKE:** I'm sorry. What I meant to say, Judge,
6 is that I think the documents may be -- the documents produced
7 may be useful to defense strategies.

8 **THE COURT:** Okay.

9 **MR. DRAKE:** But we're unable to ascertain that
10 totally because of the redaction. But -- in other words,
11 Judge, I can see how you're going in your statements and
12 questions, and I didn't want to have these documents excluded
13 if they are going to contain something that's mitigating.

14 **THE COURT:** Yeah. Well, it seems to me -- and I
15 don't want to get too far ahead of myself, but it seems to me
16 the way to think of this may depend on what exactly the
17 Government's planning to do with them. You know, I would be
18 very concerned if the Government was planning to use them to
19 try and show ownership, you know, based on, you know, the
20 timing of the disclosure.

21 I am far less concerned to the extent the Government
22 is just trying to establish pricing and it's just a question of
23 whether you think you could maybe dig something out of them
24 that would be helpful to you.

25 Because it's one thing, you know, for you to be --

1 have ample notice and time to meet the Government's
2 case-in-chief, you know, in terms of developing your own
3 arguments. You know, I think that the Government's Arguments
4 do have some traction with regard to -- you know, you've
5 mentioned that these contracts must have existed for -- you
6 know, from the start of the case. And, you know, you haven't,
7 as far as I can tell, made any serious attempts to get them.

8 So I guess those are two different things, in my
9 view. But I guess -- I mean I think how these are used at
10 trial matters a great deal. And that's why I've been kind of
11 trying to explore that. And I mean I would be most
12 comfortable, I guess, if these were just being used to refresh
13 recollection and not coming in at all, unless the defense
14 somehow wanted to introduce them.

15 But you're not sure, Mr. Bouton, about that, it
16 sounds like.

17 **MR. BOUTON:** I would have to phone a friend with
18 Mr. Strain and ask him his recollection, because he was on the
19 call with Mr. Disbrow, or the Teams meeting, to see what he
20 thinks.

21 **THE COURT:** Yeah, I mean the thing is, I mean --

22 **MR. BOUTON:** If you'd like him to chime in,
23 Your Honor, he may have a better --

24 **THE COURT:** Yeah, we will in just a moment. I mean I
25 guess the other possibility would just be redacting them

1 heavily even further and just -- not redacting, but just like
2 introducing the pages, the relevant pages. I guess, you know,
3 the defense could object to that, and I'm not going to -- I'm
4 not going to rule in advance on the issue. I think the defense
5 may have objections, under the rule of completeness or I don't
6 know what, to them coming in at all.

7 But, you know, I'm not sure how easy it's going to be
8 for you to get these in if you're trying to actually get them
9 introduced, but I don't want to prejudge that issue. I haven't
10 really thought through all the permutations, though.

11 **MR. BOUTON:** Understood, Your Honor. And I would add
12 that they did not object to those exhibits by their deadline --

13 **MS. NESTER:** We didn't have them.

14 **MR. BOUTON:** -- to reserve authenticity. Although
15 that was not, in my view, allowed by the pretrial order.

16 **MS. NESTER:** We didn't have them yet.

17 **MR. BOUTON:** Yes, you had them on the 20th --

18 **MS. NESTER:** But not at the time you did your list, I
19 don't think.

20 **MR. BOUTON:** We produced the list on the 19th and the
21 documents on the 20th, and the objections to our exhibits were
22 due last week.

23 **MS. NESTER:** We objected on the grounds of
24 authenticity.

25 **MR. BOUTON:** Yes, but really the trial order did not

1 allow you to reserve those objections, other than 402 and 403.
2 But I guess that's a different issue.

3 **THE COURT:** Whoa, whoa, whoa. I mean that's
4 something we can discuss. I mean I -- you don't have to make
5 objections based on 402 and 403, you can make those at trial.
6 But the purpose of the trial order is to flesh out other issues
7 besides those.

8 **MR. BOUTON:** Yes, Your Honor. That was my
9 understanding. But my understanding was only 402 and 403 were
10 accepted, so authenticity objections ought to have been made
11 already.

12 **THE COURT:** It sounds like she did, is what she's
13 saying.

14 **MS. NESTER:** Yeah, I did.

15 **THE COURT:** I can't rule on that. But I mean I think
16 you're right, Mr. Bouton, but I think Ms. Nester is saying --
17 she's not disagreeing with you, she's just saying but she did
18 make that objection.

19 **MR. BOUTON:** Just to all of them by reserving it.

20 **MS. NESTER:** Except for like three of them. I mean
21 we are not going to make you call the bank representatives to
22 get bank records in and we're not going to make you call the
23 department of -- the Utah corporations, whatever it's called,
24 to get the --

25 **THE COURT:** Okay. Well, I understand what you're

1 saying now, Mr. Bouton. You're saying it wasn't like a
2 document-specific objection, it was a general objection. I
3 haven't looked at how the objections were presented, so I'm
4 just not going to opine on that. But I think I understand what
5 you're getting at.

6 All right. Okay. Well, that's -- okay.

7 Mr. Strain, did you have something you wanted to say?

8 **MR. STRAIN:** I don't really have a ton to contribute.
9 My vague memory of our interview with Mr. Disbrow weeks ago is
10 that he was involved in the negotiations, that he was in the
11 room when these prices were determined, and that he can testify
12 competently about them. But Mr. Bouton's right, those
13 contracts were -- I mean he relies on them. To the exact
14 extent, I'm not sure. We'd have to do more follow-up.

15 **THE COURT:** Okay. All right. That's helpful. I
16 mean, I guess -- I guess -- I mean, as I said, I think there's
17 two distinct issues here. One is, you know, to the extent, you
18 know, one relates to the defense (inaudible) kind of explore --
19 you know, to the extent it might help the arguments they want
20 to make. The other is, you know, whether they could properly
21 come in or be referenced just for the purposes of, you know,
22 establishing pricing. And I think those are related but
23 slightly different issues.

24 I mean I guess the government, Mr. Bouton, is
25 comfortable going forward on the understanding that you may

1 have a fight to get these documents in? And --

2 **MR. BOUTON:** Yes, Your Honor. As long as my
3 colleagues are nodding their heads in agreement, I would say
4 yes, they appear to be on board with that.

5 **THE COURT:** Right. And I mean it's the defenses' --
6 I mean, again, I mean would you even want them out, though, is
7 the question I have for the defense? Maybe you don't know the
8 answer to that right now.

9 **MS. NESTER:** I don't know. I need an expert to help
10 me figure that out.

11 **THE COURT:** Okay. Any other thoughts about -- any
12 other thoughts about the motion to continue?

13 **MR. BOUTON:** Your Honor, I guess I would ask if --
14 well, no. No.

15 **MS. NESTER:** Your Honor, I would also just point
16 out -- I don't know if you've had a chance to look at it yet,
17 but I think the Government has noticed six witnesses. They
18 think they're going to finish their trial in four days. I
19 think originally we had talked about blocking this case out for
20 three weeks. I don't think any of us think that anymore. I
21 think at most this case would take two weeks and probably less.
22 So we're not talking about a huge -- we're not talking about a
23 huge inconvenience of pushing this case off for a couple more
24 months.

25 All of the witnesses -- of the six witnesses they've

1 noticed, one of them's not -- maybe it's seven, I can't
2 remember. One of them's not necessary anymore because we're
3 stipulating to the authenticity of the corporate records, three
4 of them are just people that are local that live here, and then
5 they have their two experts. So I mean the expert wasn't even
6 retained until a few weeks ago. So I just don't think it's
7 going to be a huge ordeal for us to push this trial and maybe
8 set it -- when we reset it, only set it for two weeks.

9 I know we have -- probably the jury stuff has gone
10 out. I don't know how soon you send that out. So that's the
11 only thing I think that would be probably a pain to reschedule,
12 but the rest of it's not.

13 **THE COURT:** Right. I mean there's administrative
14 issues and that's -- you know, those alone, of course, are not
15 a basis for a continuance. But I understand the points you're
16 making. Though I guess one thing I wanted to be clear about
17 the timing is, when I set a trial or when I'm asking for
18 time -- I think we went over this in October when we talked
19 about this trial schedule -- I'm not just looking at -- I'm not
20 just adding the time for the Government's case-in-chief plus
21 the time for the Defense's case-in-chief, I'm trying to build
22 in time for jury selection and jury deliberations. In some
23 cases, that may not be a significant factor. I think jury
24 selection in this case could easily take a couple of days.

25 **MS. NESTER:** I think you're right.

1 **THE COURT:** And I don't know that jury selection --
2 that we can assume that it won't take a couple days or more
3 either. I think that has to be built in. And that's one
4 reason I'm kind of reluctant to reduce the scheduled trial time
5 much.

6 **MS. NESTER:** Okay.

7 **THE COURT:** I would much rather have the jury be able
8 to come in early and go home earlier than I told them that they
9 might have to stay than to have what I've had happen before
10 where they end up having to stay a few days past what I told
11 them because they're still deliberating or something. So
12 that's part of what's going on there.

13 I think this case -- I mean if this were a simple
14 like, you know, felon in possession of a firearm case, you
15 know, we probably could assume that the jury selection and jury
16 deliberations -- we don't have to build in multiple days for
17 those things, but I'm not sure that's true here.

18 **MS. NESTER:** You're probably right.

19 **THE COURT:** Yeah.

20 **MR. BOUTON:** I would just clarify, Your Honor, if I
21 may, that we do have nine witnesses. And the only one who
22 would be brief is Mr. Disbrow.

23 **THE COURT:** Right. Well, he might be brief, it
24 sounds like --

25 **MR. BOUTON:** At least our intentions were to put him

1 on briefly.

2 **THE COURT:** Your direct examination will be brief, is
3 what you're saying?

4 **MR. BOUTON:** Yes.

5 **THE COURT:** Yeah, yeah, I understand. But you still
6 think you need how long for your case-in-chief, Mr. Bouton?

7 **MR. BOUTON:** We think we could get done in a week, if
8 jury selection took one day. We think five or six days for our
9 case-in-chief.

10 **THE COURT:** And that's building in time for jury
11 selection?

12 **MR. BOUTON:** That was building in one day for jury
13 selection. So that's two days. Five to seven.

14 **THE COURT:** I'm really skeptical about that,
15 honestly. I mean it seems like this is going to be a -- it
16 wouldn't surprise me if jury selection took a little longer in
17 this case than it sometimes does. I mean I just don't know in
18 advance. But the case does seem to implicate issues on which
19 people have fairly strong views, you know, and that's something
20 we're going to want to look at to try and make sure we can get
21 a fair jury that's fair to the Government, that's fair to the
22 Defense.

23 And it's the kind of case where also not only are
24 there a fair number of strong views, but they run in different
25 directions, you know. So I think both of you are going to --

1 I'd be surprised if the jury pool didn't present a fair number
2 of individuals that both sides -- you know, that -- I don't
3 think each side is going to be completely happy with views of
4 all of the jury pool. Let's just put it that way.

5 **MR. BOUTON:** Fair enough, Your Honor.

6 **THE COURT:** I don't know that, but it's just an
7 assumption and a guess. All right. I need a -- okay. I
8 guess -- let me just see something.

9 Well, I appreciate your arguments. I need about five
10 minutes, if you could just stand by. Don't cut your
11 connections. You can turn off your microphones and your video,
12 but stay on Zoom so we don't have to try and corral everybody
13 again.

14 (A recess was taken.)

15 **THE COURT:** All right. I'll welcome everybody back
16 now.

17 Okay. Thank you for your patience. I appreciate all
18 of your arguments today and your answers to my questions.
19 They've been very helpful.

20 I've carefully read the briefing, the motions, the
21 response, the reply, the sur-reply. I've also carefully
22 considered the points counsel have made today.

23 I'm going to deny the motions to continue.

24 First of all, I don't think there is a Rule 16
25 violation here, given that the Government represents -- and I

1 don't have any reason to question its representation -- that
2 the trial team did not have these contracts in their possession
3 until just, you know, about 24 hours before they were provided
4 to the defense.

5 And as, of course, everyone knows, 16(a) -- and I
6 don't know if I'm going to get all the numbers right, I think
7 it's (a)(1)(E) for documents and objects, requires production
8 "[u]pon a defendant's request, the government must permit
9 the defendant to inspect and to copy or photograph . . .
10 documents . . . if the [document] is within the government's
11 possession, custody, or control and . . . the item is material
12 to preparing the defense . . . [or] the government intends to
13 use the [document] in its case-in-chief at trial." Well, also
14 or if it belongs to the defendant.

15 Here, you know, I think that there's not a violation,
16 given that it was not in the Government's -- and by that I
17 understand it to mean the prosecution's -- custody or control.

18 Also, I note that the Government's intended use of
19 the document does not introduce or inject a new issue into the
20 case. The Defense has long known that the Government intended
21 to introduce testimony regarding the price the government paid
22 for the vaccine. The Government represents that the only use
23 it intends to make of the documents is to support testimony
24 regarding the price of the vaccine.

25 I do want to be clear that I'm open to limitations on

1 the document that would enforce -- you know, make sure it's
2 used only for that purpose; for example, things such as
3 admitting only portions of the documents. I also am not going
4 to rule in advance as to potential objections to the documents
5 coming in at all.

6 All right. Now, because the Government is not using
7 it to establish ownership and because there's not a Rule 16
8 violation, against that backdrop, I cannot find that
9 Dr. Moore's counsel reasonably needs additional time to prepare
10 for trial, taking into account the exercise of due diligence
11 based on the production of these documents.

12 Counsel for Dr. Moore represents that as far back as
13 2023, defense counsel discussed with the prosecutors in this
14 case the need to trace the ownership of the vaccines all the
15 way back to the manufacturers.

16 Further, the existence of contracts between the
17 vaccine manufacturers and the government is no secret. Indeed,
18 it should have been obvious to defense counsel that such
19 contracts must have existed.

20 Nor is the -- you know, and counsel today mentioned
21 the involvement of DOD. But, again, the fact that the
22 operation -- you know, the vaccines were developed as part of
23 Operation Warp Speed is also a matter of public record and long
24 has been.

25 It follows, I believe, that the defense has had years

1 to investigate the contractual relationship between the vaccine
2 manufacturers as well as when, whether and how the government
3 took title to the vaccines from the manufacturers, if it did.
4 I guess, "when, whether and how" is what I said, I guess that
5 covers if it did.

6 At our hearing in October, defense counsel indicated
7 the need for additional discovery. And I told them to get
8 right on it and that I anticipated that it would be done by the
9 spring.

10 Now, to be sure, Dr. Moore's motion includes the
11 conclusory assertion that "the defendants were not able to
12 obtain the [][contract] documents" the Government recently
13 disclosed "either through FOIAs or subpoenas" "[b]ecause of the
14 confidential nature of the [] documents." But counsel for
15 Dr. Moore does not describe the efforts the defendants actually
16 made to obtain the documents.

17 You know, there was a reference today to a FOIA
18 request, but apart from that -- but it's not clear to what
19 extent the defense followed up on that, other than to say it
20 would have taken 18 months. And it's not clear by that whether
21 Ms. Nester meant that they abandoned the request or whether
22 it's still pending or what. But apart from that, it's not -- I
23 don't have any representations or indication that the defense
24 made any efforts to obtain the documents, despite having years
25 to explore the issue of whether the vaccines were government

1 property when Dr. Moore allegedly disposed of them.

2 As far as I can tell, there's no indication in the
3 record that the defense ever even asked the prosecution, you
4 know, for the documents, or that the prosecution would not have
5 attempted to provide them if the defense had made such a
6 request.

7 Certainly, FOIA is subject to various exemptions but,
8 you know, the court does have subpoena power. There's -- you
9 know, if there were -- you know, if the defense was
10 encountering road blocks and they thought these contracts were
11 genuinely important to their defense, it's not clear to me why
12 that could not have been brought to the attention of the court.

13 Because Dr. Moore had ample time to explore whether
14 the vaccines were federal government property when Dr. Moore
15 allegedly disposed of them, I cannot find that counsel for
16 Dr. Moore has exercised due diligence in investigating this
17 issue.

18 Further, having reviewed the documents on which
19 Dr. Moore bases his motion for a continuance, and to be sure,
20 they're redacted and not complete, but I do not see anything in
21 the documents that seems at all likely to support an argument
22 that the government did not obtain title to the vaccines at the
23 time they were delivered to Dr. Moore, or even anything that
24 suggests that additional exploration of this issue is
25 warranted.

1 Rather, to the extent the documents address the
2 issue, they appear relatively straightforward. As would be
3 expected, the contracts state that the government took title --
4 well, the Janssen contract states that the government took
5 title when the vaccines were delivered to vendor-managed
6 inventory, or to a site designated by the government and the
7 government accepted delivery in writing -- that's the Janssen
8 contract at 47 -- or when the government provided pre-approval
9 documents to the manufacturer confirming availability of
10 vaccine doses. That's Pfizer at 50.

11 It thus appears to be candidly that the defense has
12 no reasonable good faith basis for thinking that further
13 explanation in the contracts on this issue would be helpful.
14 Rather, it seems that they seek to engage in a fishing
15 expedition on the off-chance that something might turn up,
16 especially given that the defense has had ample opportunity to
17 explore the issue.

18 I thus conclude that denying the request for
19 additional time to analyze and consult an expert regarding
20 these documents would not be a miscarriage of justice.

21 In addition, although I appreciate that Dr. Moore is
22 willing to waive his right to a speedy trial, I must consider
23 "the public's interest in a speedy trial." I'm quoting there
24 from *United States v. Williams*, 511 F.3d 1044 at page 1058 from
25 the Tenth Circuit in 2007.

1 Given the significant resources that the Government
2 has expended in complying with the operative trial order, and
3 indeed with the previous trial order for January, for the
4 January 2025 trial date, I conclude that the public's interest
5 in a speedy trial outweighs the ends-of-justice factors that
6 the defendants have identified under the Speedy Trial Act.

7 I so find.

8 Further, I believe that the parties understood, in
9 November 2024 when I set the current trial date, that we were
10 setting a firm trial date that would be continued only for
11 truly unforeseen circumstances. But Dr. Moore has long been
12 aware that the Government must show ownership of the vaccines
13 to convict the defendants under Counts 2 and 3. Indeed, its
14 motion to dismiss questioned the Government's ability to make
15 that showing, albeit on somewhat different grounds.

16 It follows, I conclude, that Dr. Moore's continuance
17 motion is not based on truly unforeseen circumstances.

18 And again on that point, I note that, you know, even
19 at the time I denied the motion to dismiss and we set this
20 trial date -- though there was some subsequent movement back
21 and forth in connection with the detention -- but, you know, we
22 originally set this trial date in the October hearing. You
23 know, there was an understanding that additional discovery
24 might be necessary, and I was very clear that, you know, that
25 needed to get done.

1 All right. Now, I do have some concerns about
2 counsel for Mr. Andersen, his health condition. But he does
3 represent that, you know, he believes he will be able to
4 proceed by the July trial date and that, apart from this issue
5 that I have addressed, he does not anticipate any other
6 problems being ready for trial. So for that reason as well, I
7 don't think that's a basis for a continuance, additional
8 time -- you know, reasonable time necessary for effective
9 preparation.

10 For all of these reasons, I cannot find that a
11 failure to grant a continuance would work a miscarriage of
12 justice or deny counsel the reasonable time necessary for
13 effective preparation, taking into account the exercise of due
14 diligence. And I thus cannot find that the ends of justice
15 served by granting the requested continuance outweigh the best
16 interest of the public in a speedy trial.

17 For that reason, trial will begin, as scheduled, on
18 July 7th, 2025. Again, to be clear, my ruling is premised on
19 the understanding that the Government will attempt to use the
20 document only to show the pricing and not to attempt to show
21 that the government took title to the vaccines. And I am open
22 to various possibilities for enforcing that or ensuring that
23 that is the use to which the document is limited. You know,
24 whether that's reducing the number of pages that are actually
25 admitted into evidence to those that are related to pricing and

1 not those involving title, or to perhaps, you know, using it
2 simply to refresh recollection, if that works, without having
3 it given to the jury at all.

4 I'm also -- as I said before, I am not ruling in
5 advance that the document is even admissible. I'm not -- you
6 know, the defense may have arguments that it can't be properly
7 authenticated, they may have arguments that it can't fairly be
8 admitted under the rule of completeness. I don't know what's
9 been preserved or what arguments might be made, but I'm not
10 intending to rule on those at this time.

11 But on that understanding, the motion to continue is
12 denied.

13 All right. Are there any other matters that -- well,
14 first of all, any questions about that?

15 **MR. DRAKE:** Judge, if I may --

16 **MS. NESTER:** Can you let me go first, David?

17 **THE COURT:** Let's go Ms. Nester first and then
18 Mr. Drake.

19 **MS. NESTER:** Your Honor, one thing I would ask now is
20 that -- we got the documents after our expert deadline had
21 expired. I believe I'm going to need a rebuttal expert to
22 explain these documents in a way that is understandable to the
23 jury. And I think we're entitled to do that. But because of
24 its late disclosure, I already am past a deadline.

25 I'm asking to be relieved from that deadline and

1 allow me to designate late a rebuttal expert. And if you have
2 to go get a fact witness to question these documents in any
3 way, that I be allowed to do late disclosure of those witnesses
4 as well.

5 **THE COURT:** That seems -- I mean I'm not going to
6 grant that based only on what you just said, but it seems like
7 there might be something to what you're saying. I'll consider
8 a motion that kind of elaborates on the points you're making.

9 **MS. NESTER:** Okay. I'll file one. Thank you.

10 **THE COURT:** But again, to be clear, I don't think
11 just what you said is enough. But I do think -- it may be the
12 seed of a reasonable argument, but I'd want to give you the
13 chance to elaborate that a little bit.

14 **MS. NESTER:** All right. Thank you.

15 **MR. DRAKE:** And, Judge, what I would ask is if we
16 could have the redaction removed and then we could be put
17 under -- that we show it to no one, we don't even share it with
18 our clients, sign a non-disclosure agreement or whatever would
19 be comfortable for the Court, so that we can see the whole of
20 the documents. Because I have an issue with pricing and
21 ownership, and I think the two are inextricably related. So if
22 we could do something with the redaction, I'd really appreciate
23 that.

24 **THE COURT:** I'd like to hear the Government's view on
25 that. I mean, what do -- again, it's not often that we allow

1 evidence in to trial that even the lawyers are not allowed to
2 see.

3 **MR. BOUTON:** Yes, Your Honor, it is unusual. But
4 there was much pushback from ASPR in providing this to us. We
5 got more than I thought we would get. I thought we would just
6 get pricing pages. And they have concerns based on
7 confidentiality agreements with the manufacturers, as I
8 understand, and other issues about this information being made
9 public.

10 We did try to -- we made them aware that there was a
11 protective order, right, that we have discovery obligations in
12 the case, and that defense counsel would be bound by the
13 protective order to use it only for the case and not to
14 publicly disclose it. They still had extreme reservations and
15 provided us the documents only in this form.

16 **THE COURT:** Okay. Well, I mean does the protective
17 order that's in place allow attorneys' eyes only designations?

18 **MR. BOUTON:** I think we would need more specific
19 language and an order from the Court to allay their concerns
20 that these be shared with them, and that it be attorneys' eyes
21 only for counsel. They were not entirely comfortable, just
22 based on the protective order that's in place, which is why
23 they gave us the redacted versions.

24 **THE COURT:** Yeah.

25 **MR. DRAKE:** Judge, I'm willing to sign whatever. I

1 have no intent whatsoever to disclose this to anyone, and I'd
2 be bound by anything that the government wants to have me sign,
3 and I'm sure Ms. Nester would.

4 **MS. NESTER:** Well, maybe not anything.

5 **MR. DRAKE:** Well, I mean within the context of what
6 we're saying.

7 But, Judge, one problem, they have this witness on
8 the stand and the signature's redacted, so he can't even tell
9 if he signed it or not. I mean that's the problem.

10 But I think, as I said before, it would be a great
11 benefit if we could have an unredacted version. And I'd be
12 willing to sign whatever protective order is necessary not to
13 share it with anyone except maybe co-counsel.

14 **THE COURT:** Well, why -- I think that's -- I'm
15 reluctant to allow a document to come in that counsel has not
16 seen.

17 But Mr. Bouton, do you want to speak to that?

18 **MR. BOUTON:** Maybe.

19 **THE COURT:** Well, you raised your hand, which is why
20 I was --

21 **MR. BOUTON:** Yeah, I was considering whether I
22 could respond to it. I mean there is a concern with this of
23 just allowing more fishing expedition with the documents. Our
24 position is the redacted portions have never been in our
25 control or possession, I haven't seen them. We don't know what

1 they are so this would be, in a sense, expanding the discovery.
2 But I understand the Court's concerns about the rule of
3 completeness.

4 **THE COURT:** I even -- can I even allow a document to
5 be sealed or redacted in trial without making findings that
6 it's properly redacted? I mean --

7 **MR. BOUTON:** Probably not, Your Honor.

8 **THE COURT:** Okay. That might be a problem for you,
9 then, if we can't figure out how to get an unredacted version
10 that at least I can see and at least the attorneys can see.

11 **MR. BOUTON:** We're definitely willing to go back to
12 ASPR and address the Court's concerns. And if the Court is
13 ordering us or ordering them to produce the unredacted version
14 pursuant to an attorneys' eyes only protective order, I'm sure
15 we would comply. But it might take something like that.

16 **THE COURT:** Yeah. Yeah. Well, it seems like it
17 might be warranted, given where we are right now.

18 What's your basis -- I mean other than that you don't
19 have it, but I mean that's -- that's a tricky argument at this
20 point.

21 **MS. NESTER:** Your Honor, can I jump in?

22 **THE COURT:** Yeah.

23 **MS. NESTER:** I've done litigation before -- and I
24 think both Mr. Bouton and Mr. Strain may have as well -- but
25 I've done top-secret litigation before where we had to use SCIF

1 and follow the CIPA and all that stuff, or CIPA, or whatever
2 it's called. And even those cases require that unredacted
3 top-secret national security documents be given to the
4 attorneys to read in their unredacted form. And a lot of times
5 the government has to make a call: Is it more important to you
6 to prosecute this person or is it more important to you to keep
7 this document sealed? And that's your call. And they've had
8 to drop cases because they would not unseal terrorist-related
9 documents, and they just had to drop it. And I mean that's
10 happened and that's not --

11 **THE COURT:** Thank you, Ms. Nester. I alluded to that
12 earlier and I'm well aware of all that.

13 **MS. NESTER:** Yeah.

14 **THE COURT:** Yeah. I just -- I don't know that --
15 yeah, I think I -- I do think we need a protective order. And
16 I think for starters it should be attorneys' eyes only. But I
17 do think if you're actually going to use this at trial, I think
18 we have to be in a position to evaluate what it says and
19 whether the redactions are proper, and so forth. So I do think
20 we need a protective order and I do think we need the
21 unredacted documents. So, yeah, I do think that is an order I
22 would be willing to make. But I'd also like counsel, to the
23 extent the current protective order doesn't have like
24 attorneys' eyes only provisions -- I thought it did, but I
25 might -- it's been a while since I've had to look at that.

1 But maybe the parties could propose a
2 specific agreement or a specific modification to the current
3 agreement, and by that I mean the protective order. So like
4 propose an attorneys' eyes only protective order or an
5 amendment to the current one, if it's needed, to just allow for
6 that kind of designation. And then I guess I would allow the,
7 you know, counsel to propose for me an order just requiring the
8 production of an unredacted version of the documents, subject
9 to an attorneys' eyes only declaration. And then I'll decide,
10 you know, if there's -- we'll go from there.

11 But, yeah, I mean I do think, to the extent the
12 Government intends to introduce this at trial, that that -- you
13 know, it's -- I think that's probably requisite for both me and
14 defense counsel to be able to at least see what the entire
15 document says.

16 Whether or not Ms. -- you know, the defense is able
17 to use it in any way, I don't know. As I said, I think it's
18 something of a fishing expedition. At least in the unredacted
19 version I don't see anything that looks like a fruitful line of
20 inquiry, but there's a lot of redactions.

21 **MR. BOUTON:** Understood, Your Honor. And I do think
22 if we were to tailor a protective order that specifically
23 addressed these documents it would allay some of the concerns
24 that ASPR raised.

25 **THE COURT:** But I mean Ms. Nester is right, I mean

1 even if it's like top-secret, alphabet-soup-code-word kind of
2 stuff, you know, you can't just not have -- you can't have it
3 introduced at trial in a redacted form without the judge or the
4 defense ever having a chance to see it.

5 **MR. BOUTON:** Understood, Your Honor.

6 **THE COURT:** Yeah. Anything else?

7 **MR. BOUTON:** Not from the United States, Your Honor.

8 **THE COURT:** Okay. And I don't even know if this is
9 an appropriate question, Mr. Bouton, and I -- and you don't
10 have to answer, but I just --

11 **MR. BOUTON:** Now I'm worried, Your Honor.

12 **THE COURT:** I hope you got a -- I hope you've done
13 your political due diligence on this case, because we're
14 putting a lot of effort into this and I -- you know, I hope
15 (inaudible) is really okay with this going forward.

16 **MR. DRAKE:** That's a good point, Judge.

17 **MR. BOUTON:** I have reason to believe that they are,
18 Your Honor.

19 **THE COURT:** Okay. Well, I'm not going to push you on
20 that, I just -- you know, if we're going to put all this effort
21 into the case, you know, I want to make sure that, you know,
22 we're not on a fool's errand, as it were.

23 But, again, you said you've got -- I'm not going to
24 require more than what you just said. I just wanted to flag
25 that issue, just to make sure. I'm sure you're aware of the

1 need for that.

2 **MR. DRAKE:** Judge, we were planning on having RFK
3 come in and testify. I'm just kidding.

4 **THE COURT:** I didn't see that on your exhibit list.

5 **MR. BOUTON:** He was not on the witness list.

6 **MR. DRAKE:** He'll be a rebuttal witness, Judge.

7 **THE COURT:** All right. Very well. Again, as I said,
8 I don't really even want to like press you or ask about that, I
9 just wanted to make sure that -- I'm sure that's something
10 you're sensitive to and aware of, so --

11 **MR. BOUTON:** Yes, Your Honor, I understand we're
12 devoting significant government and private and judicial
13 resources on this case.

14 **THE COURT:** Right. Right. Understood. Very good.
15 I appreciate that.

16 Any other matters we should address at this time?

17 **MR. DRAKE:** Judge, is now an inappropriate time or an
18 appropriate time to tell the court reporter we're requesting a
19 transcript of today or do I do that with her directly?

20 **THE COURT:** You can do it directly.

21 **MR. BOUTON:** Nothing from the United States,
22 Your Honor.

23 **MS. NESTER:** Your Honor, do you know when you're
24 going to get us that first round of questionnaires that got
25 sent out?

1 **THE COURT:** Real soon. I was waiting until after
2 today, actually.

3 **MS. NESTER:** Okay. Thank you, Your Honor.

4 **THE COURT:** Yeah, it doesn't seem like there is a
5 huge amount of dispute among the parties. It seemed like there
6 was maybe one or two that struck me as relatively minor issues.
7 But it seemed like you'd reached -- you know, that there were
8 some additional proposed questions, but there wasn't much
9 controversy.

10 Am I wrong about that?

11 **MS. NESTER:** No. I think we kind of just each had
12 questions we were worried about. But we also have the pending
13 motions in limine, which the sooner we can -- are you
14 anticipating us arguing that at the pretrial? Because the
15 sooner we know that, the better for our defense.

16 **THE COURT:** Yeah, I was anticipating addressing those
17 at pretrial.

18 **MS. NESTER:** Okay. Perfect. Thank you.

19 **THE COURT:** Okay. Anything else?

20 **MR. BRASS:** Not for me.

21 **THE COURT:** Okay. All right. Well, thank you. In
22 that case -- I guess I didn't ask everyone specifically, but
23 I'm not seeing any hands or anything, so I'm assuming
24 everyone's done.

25 Thank you, again. And court is adjourned. (2:40 p.m.)

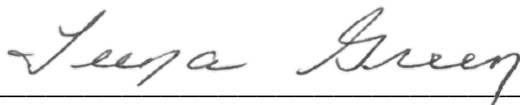
CERTIFICATE OF COURT REPORTER

This is to certify that the proceedings in the foregoing matter were reported by me in stenotype and thereafter transcribed into written form;

That said proceedings were taken at the time and place herein named;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the event thereof.

In witness whereof I have subscribed my name this 4th day of June 2025.

A handwritten signature in cursive script, reading "Teena Green", is written over a horizontal line.

Teena Green, RPR, CSR, CRR, CBC