

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

Plaintiff,

VS.

HANNAH KASS,

Defendant.

CASE NO. 26CR01280

Hon. Sonja M. Brown

DEFENDANT KASS'S
MOTION TO DISMISS BASED ON VIOLATION OF DUE PROCESS RIGHTS
REQUEST FOR VIRTUAL HEARING

COMES NOW, Hannah Kass, and through undersigned Counsel, hereby submits this MOTION TO DISMISS BASED ON VIOLATION OF DUE PROCESS RIGHTS, pursuant to Ga. Const. art. I, § I, para. I and U.S. Const. amend. V and XIV, on all charges in the above-referenced case. Concurrently, should the Court require argument, Defendant submits a REQUEST FOR VIRTUAL HEARING, pursuant to Ga. R. Super. Ct. 9.2. In support of her Motion to Dismiss, Defendant shows as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

1. Since its announcement, the Atlanta Public Safety Training Center, popularly known as “Cop City,” has faced strong and broad public opposition.¹ Opponents to the project have

¹ Christina Maxouris, [Atlanta wants to build a massive police training facility in a forest. Neighbors are fighting to stop it](https://www.cnn.com/2022/09/24/us/atlanta-public-safety-training-center-plans-community/index.html), CNN, Sept. 24, 2022 (accessed May 14, 2026, at <https://www.cnn.com/2022/09/24/us/atlanta-public-safety-training-center-plans-community/index.html>); David Peisner, [The Forest for the Trees](https://bittersoutherner.com/feature/2022/the-forest-for-the-trees-atlanta-prison-farm), The Bitter Southerner, Jan, 20, 2023 (accessed May 14, 2026, at <https://bittersoutherner.com/feature/2022/the-forest-for-the-trees-atlanta-prison-farm>).

criticized the timing of the construction on the heels of nationwide protests in the wake of the murder of George Floyd, as well its location, the Weelaunee Forest,² from which indigenous people were violently expelled in the 1800s to make way for a plantation worked by enslaved people before becoming a notorious prison camp. Others have objected to the climate effects of deforesting important greenspace.³

2. Defendant was allegedly arrested on May 12, 2022, at or near a protest. It is beyond dispute that, on that day, a rally occurred against Brasfield & Gorrie, the construction contractor that built Cop City, in the context of the broad “Stop Cop City” movement.
3. Cobb County Police Department Officer Brian Thompson obtained an Arrest Warrant against Defendant, giving rise to the underlying case in this matter.
4. Cobb County Magistrate John Strauss set Defendant’s bond at \$20,000.00. Defendant posted bond and was released.
5. Since Defendant’s release, the State took no action on this case. For over a year, Defendant appeared all but forgotten.

Fulton County Indictment

6. However, despite not indicting this case in Cobb County, on August 29, 2023, the Attorney General indicted Defendant in Fulton County in an overreaching indictment under the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, Fulton County Case 23SC189192.

² This swath of old-growth, urban forest is also known as the South River Forest, spanning from the location of Cop City and the Old Atlanta Prison Farm to Intrenchment Creek Park.

³ Liza Featherstone, [Atlanta’s “Cop City” and the Vital Fight for Urban Forests](https://newrepublic.com/article/171055/atlanta-cop-city-vital-fight-urban-forests), The New Republic, Mar. 9, 2023 (accessed May 14, 2026, at <https://newrepublic.com/article/171055/atlanta-cop-city-vital-fight-urban-forests>).

7. The allegations against Defendant in the RICO indictment centered on the same allegations from this case, stemming from May 12, 2022, protest. In effect, Defendant was prosecuted for the same acts she is indicted for now, under a RICO conspiracy:

On May 12, 2022, KATIE KLOTH, TYLER NORMAN, and HANNAH KASS vandalized a Brasfield and Gorrie office building in Cobb County, thereby knowingly using threats against Brasfield and Gorrie officials with the intent to cause and induce the Brasfield and Gorrie officials to withhold records, documents, and testimony in official proceedings. This is an overt act in furtherance of the conspiracy.

8. The RICO case featured many accusations across multiple counties, states, and years.
9. Between 2023 and 2025, the RICO case moved along with multiple administrative hearings, discovery exchanges, ever-changing deadlines, and two different judges.
10. During a motions hearing on September 8, 2025, Fulton County Superior Court Judge Kevin Farmer asked the State why a March 5, 2023, DeKalb County incident was not charged as a separate Arson count in the RICO indictment. The State, through Assistant Attorney General Hallie Dixon, explained that this was because of venue issues:

Yes. Because the underlying arson, there is no venue for, to bring in an indictment in Fulton County. We could not bring that as a separate count because this Court lacks and this county lacks venue over it as an individual or a separate offense. So we couldn't include it as a separate count.

Exhibit A, Excerpt from September 8, 2025, Hearing.

11. Ultimately, on September 9, 2025, Judge Kevin Farmer orally dismissed the RICO charge, which details the same allegations against Defendant as this matter.
12. After Judge Farmer's oral decision, the State, through Deputy Attorney General John Fowler, stated the Attorney General's intention to appeal the Fulton County dismissal

once the order was published. The Office of Attorney General Chris Carr confirmed this intent to immediately appeal upon receiving Judge Farmer's written order.⁴

13. Judge Farmer's Order of Dismissal was published on December 30, 2025, formally dismissing the RICO case against Defendant. Exhibit B, Fulton Order of Dismissal.

14. On January 20, 2026, the Attorney General filed an Application for Interlocutory Review of Judge Farmer's dismissal, giving rise to Georgia Court of Appeals case A26I0120.

15. On February 11, 2026, the Georgia Court of Appeals granted the State's Application for Interlocutory Review. Accordingly, on February 13, 2026, the Attorney General filed a Notice of Appeal in Fulton County Superior Court.

16. Meanwhile, Cop City has been opened.⁵

Dismissal of Similar Case in DeKalb County

17. In DeKalb County, many people are facing the same reality as the one here: accused of a felony in a local arrest warrant, yet indicted based on the same alleged acts in the Fulton County RICO case.

18. On August 6, 2025, DeKalb County Superior Court Judge Gregory Adams heard a Motion to Dismiss in case D0293186, for defendant James "Jamie" Marsicano, who had been arrested on March 5, 2023.

19. On August 14, 2025, Judge Adams concluded that the defendant's Due Process (and Speedy Trial) rights had been violated after a 29-month delay in bringing forth a trial in

⁴ Michael Seiden, AG to file appeal after judge throws out RICO charges against training center protestors, WSB-TV, Sept. 9, 2025 (accessed on May 14, 2026, at <https://www.wsbtv.com/news/local/atlanta/ag-file-appeal-after-judge-throws-out-rico-charges-against-training-center-protestors/RUNOWLL2QBJTDFDLFQ4VNQM334/>).

⁵ Chamian Cruz, Atlanta Public Safety Training Center opens after years of controversy, WABE, Apr. 29, 2025 (accessed on May 14, 2026, at <https://www.wabe.org/atlanta-public-safety-training-center-opens-after-years-of-controversy/>).

which “the Attorney General’s Office appears to have delayed this matter in order to gain a tactical advantage over the defense.” Exhibit C, Marsicano Dismissal Order.

20. Additional defendants in DeKalb County have moved for dismissal on the same grounds.

Cobb County Indictment

21. Months after Attorney General Chris Carr decided to appeal the dismissal of this same case’s underlying facts in Fulton County, on April 23, 2026, he called for a public press conference announcing this Indictment.⁶

22. This Indictment came 47 months after the incident and 19 days before the expiration of the 4-year statute of limitations for the felonies brought forth.

23. The State continues to pursue its appeal of the dismissed Fulton County RICO case.

24. The defense has been prejudiced by this Indictment’s delay and the unending same prosecution in Fulton County, which Defendant had to defend against and continue to strategize around. Over the past four years, under restrictive bond conditions, Defendant has suffered irreparable harm in her personal and professional relationships; employment prospects; mental health; housing; digital security; and property.

ARGUMENT

The State has violated Defendant’s Due Process rights in its prejudicial and tactical pre-indictment delay, combined with a prosecution and appeal in another county, requiring dismissal of all charges against her in this matter. “[A]n inordinate delay between the time a crime is committed and the time a defendant is arrested or indicted may violate due process guarantees under the Fifth and Fourteenth Amendments.” Wooten v. State, 262 Ga. 876, 878, (1993) (citing United States v. Marion, 404 U.S. 307, 324 (1971)). In order to prevail on a claim that due

⁶ Fox5, Arson indictments in training center attack, Fox Television Stations, Apr. 23, 2026 (accessed on May 14, 2026, at <https://www.fox5atlanta.com/video/fmc-we2tc92anti2kbe3>).

process rights were violated due to an indictment delay, the defendant “must prove (1) that the delay caused actual prejudice to his defense, and (2) that the delay was the result of deliberate prosecutorial action to give the State a tactical advantage.” Kimbrow v. State, 317 Ga. 442, 449 (2023) (citations omitted); Manley v. State, 281 Ga. 466, 467 (2007).

The State’s inordinate delay in prosecuting Defendant, while indicting her in another county with no venue under the same allegations, has been irreversibly prejudicial to Defendant’s defense and her life. These strategic choices have been facially deliberate, solely to obtain advantages against Defendant’s case, and this Court must swiftly dismiss this case with prejudice to protect Defendant’s constitutionally guaranteed due process rights.

I. Defendant and her defense have been actually and irrevocably prejudiced, beyond regular prejudice from the passage of time.

Accused of multiple felonies in 2022, with no real ability to prepare a defense against the accusations until now, Defendant has suffered much more than the regular prejudice suffered from the passage of time in a criminal case. Wooten v. State, 262 Ga. 876, 880 (1993). In its relentless political prosecutions, the State perplexingly indicted Defendant in Fulton County under the same alleged conduct that gave rise to this same Indictment and is now pursuing an appeal after the Fulton case was dismissed. The State itself has acknowledged that there could be no venue in Fulton County for an out-of-county offense, yet it purposefully included this one under a RICO conspiracy theory, avoiding Cobb County until 47 months after the fact.

Hence, under a legally questionable co-conspirator theory, Defendant’s Cobb County case has already moved toward a trial by proxy in Fulton County, to extreme publicity and media coverage. This State-created reality has resulted in direct, irreversible impacts on any defense and evidence that Defendant may have in Cobb County, not to mention on any prospective jury. In effect, the State tarnished the typical protections afforded by the statute of limitations, four

years, because it chose to prosecute Defendant for the conduct at issue, under another statute. See Billingslea v. State, 311 Ga. App. 490, 493 (2011) (“[T]he applicable statute of limitations is the primary guarantee against bringing overly stale criminal charges.”) (citing United States v. Marion, 404 U.S. 307, 322 (1971)). Damaging the defense, Defendant was forced to reveal strategic motions and challenges in Fulton County against the same conduct she is confronted with now. Crucially, the Attorney General refuses to give up on the Fulton RICO, effectively forcing Defendant to now calculate a defense against *two* prosecutions, with entirely different elements and considerations, yet the same alleged facts in Marietta. Hence, because the Attorney General indicted again the same conduct 19 days before it was too late, the prejudice is more than mere natural unavailability of witnesses, fading of memory or disappearance of evidence (which Defendant’s defense has also suffered from).

Making matters worse, as the State of Georgia has expanded its dragnet of surveillance, raids, and detentions against people advocating against Cop City, it has made Defendant’s simple, albeit stale, Cobb County case more and more unnecessarily complex and public. The defense is prejudiced with mounting terabytes of evidence that could be used against Defendant, which has exponentially grown four years after this case began. Tellingly, in the final (late) discovery dump in the Fulton County case, there were *new* interviews with law enforcement officers from incidents dating over two years prior. The defense spent years of time fighting the RICO case, and it must now expend resources again in Cobb County. It remains to be seen what discovery is even available four years after this incident.

Furthermore, in its political quest against a social movement, the State and its agents call the media after every police action: the State has been trying the charges against Defendant in the court of public opinion for four years, to actual and unchallengeable prejudice to Defendant’s

defense here in Cobb County. Indeed, the media and public found out about this Indictment even before Defendant was served with a copy of it.

Finally, in evaluating the delay's impact to the defense, this Court should also consider the enormous, commonsense negative impact the 47-month-old charges had in her life. The State then compounded those effects by wielding the RICO statute against Defendant.

II. The Georgia Attorney General deliberately delayed Defendant's prosecution in Cobb County, solely for tactical advantage, while it continues to concurrently attempt to prosecute her in Fulton County.

In DeKalb County, Superior Court Judge Gregory Adams held that the State's 29-month delay in indicting a similar case was deliberate. Ex. C. Likewise, by indicting Defendant in Fulton County under the same alleged conduct as this case's, the State has clearly shown that its prosecutorial delay in Cobb County was intentional and strategic. An indictment follows a completed criminal investigation, so the State cannot argue that this delay was "caused by an ongoing investigation [which] does not result in a violation of due process." Manley v. State, 281 Ga. 466, 468 (2007) (citations omitted). Instead, the reason for the delay was calculated: the State disrupted Defendant's life with serious charges to quash political dissent and forcefully create cooperating defendants. Quick to bring explosive charges and then letting them sit, the Attorney General forum-shopped Fulton County for its RICO prosecution, utilizing the then-dormant Cobb County charges as leverage against Defendant for cooperation there. Now that the State's RICO strategy in Fulton County collapsed, it seeks to take a second bite at the apple in the county where it should have prosecuted the offense to begin with.

Furthermore, the criminal conduct that Defendant is accused of in Cobb County ended the day she was allegedly arrested, and so should have the State's investigation, a fact further proven by the State's indictment of the conduct in Fulton County. Cf., Bunn v. State, 284 Ga. 410, 412 (2008) ("Here, the record supports a finding that any delay was attributable to the

ongoing investigation of the crime which was, at times, complicated by such things as recanted testimony by certain witnesses.”) These cases’ records indicate “that the delay [is] deliberate and designed to give the State a tactical advantage.” Kimbro, 317 Ga. at 449-50. The State already possessed the facts, names, and underlying theory for this case, which it wanted to try in Fulton through the RICO Act.

Finally, the State itself acknowledged in the Fulton County case that venue for an out-of-county substantive offense *only lies* in that county. Yet it *chose* to indict these facts only in Fulton County, through a theory of out-of-county overt acts in a RICO conspiracy. Making the State’s deliberate, strategic choices even clearer, it is still trying to save the concurrent prosecution in Fulton through an appeal. Thus, this later Cobb indictment was not prompted by newly discovered evidence, but rather from the breakdown of the Fulton case.

In sum: the State employed the Cobb County case as part of the broader Fulton County RICO case, which it lost due to its own procedural issues, then appealed, and now attempts to proceed with a different prosecution, based on the same allegations. This sequence shows that the State’s delay was deliberate and strategic, and no reasonable explanation could justify the 47 months of no State action in Cobb County when the facts of this case were used to obtain the Fulton County RICO indictment against Defendant and sixty others.

CONCLUSION

WHEREFORE, based on the foregoing, Defendant respectfully requests that this Court DISMISS this case due to a violation of her Due Process rights. Since Defendant has not received discovery, she therefore reserves the right to amend and supplement this Motion based on newly discovered information. Should the Court require argument, Defendant requests a VIRTUAL HEARING.

DATED: This, the 15th day of May, 2026.

/s/ Xavier Torres de Janon
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**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,

PLAINTIFF,

VS.

HANNAH KASS,

DEFENDANT.

CASE NO. 26CR01280

CERTIFICATE OF SERVICE

I hereby CERTIFY that a copy of the foregoing MOTION TO DISMISS BASED ON VIOLATION OF DUE PROCESS RIGHTS and REQUEST FOR VIRTUAL HEARING were served via Odyssey eFileGA e-service to Opposing Counsel Deputy Attorney General John Fowler at: Jfowler@law.ga.gov.

DATED: This, the 15th day of May, 2026.

/s/ Xavier Torres de Janon
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Exhibit A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

vs.

FRANCIS CARROLL, JAMES LEE
MARSICANO, ALEXIS ACHILLES
PAPALI, SPENCER BERNARD LIBERTO,

Defendants.

INDICTMENT NO. 23SC189192

VOLUME 1 OF 3

Transcript of motions proceedings before
the Honorable Kevin M. Farmer, Judge,
Fulton County Courthouse, Courtroom 4D,
hybrid proceedings via Zoom videoconference,
Atlanta Judicial Circuit,
commencing September 8, 2025.

A P P E A R A N C E S:

On behalf of the
State of Georgia:

JOHN E. FOWLER, Esq.
HALLIE SCOTT DIXON, Esq.
Office of the Attorney General

On behalf of the
Defendant Carroll:

MICHAEL AARON SCHWARTZ, Esq.
New South Law, LLC

On behalf of the
Defendant Marsicano:

XAVIER ANDRES TORRES de JANON, Esq.
De Janon, PLLC

On behalf of the
Defendant Papali:

RUSSELL ZANE HETZEL, Esq.
Russell Z. Hetzel, PC

On behalf of the
Defendant Liberto:

ANTHONY L. KOZYCKI, Esq.
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Kozycki Law, LLC

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404-612-4576

1 Because the murders in *Dorsey* -- there was but one
2 murder. There was but one murder. So an act -- you
3 know, a predicate act involving murder. Everybody knew
4 which murder they were talking about.

5 We don't know -- they don't know what arson you're
6 talking about.

7 MS. DIXON: The allegation is that they attempted
8 the arson on March 5th, so I -- and did acts to attempt
9 that action.

10 THE COURT: Dorsey was charged with a murder.

11 MS. DIXON: Yes, sir.

12 THE COURT: One body.

13 MS. DIXON: Yes.

14 THE COURT: Okay. Some of these defendants are
15 charged with one arson that occurred on January 21st?

16 MS. DIXON: Yes.

17 THE COURT: Okay. And in March, they're accused of
18 aiding and abetting arson.

19 MS. DIXON: Well, there's also counts in the 225
20 that pertain to --

21 THE COURT: Those aren't counts.

22 MS. DIXON: Sorry. There are also paragraphs in
23 the 225 listing of overt acts which include predicate
24 acts --

25 THE COURT: Is there even an arson that is alleged

1 on March 5th?

2 MS. DIXON: There's not a separate crime of arson on
3 March 5th.

4 THE COURT: But yet they --

5 MS. DIXON: Because of your jurisdiction --

6 THE COURT: -- on March 5th, they aided and abetted
7 that.

8 MS. DIXON: Yes. Because the underlying arson,
9 there is no venue for, to bring in an indictment in
10 Fulton County. We could not bring that as a separate
11 count because this Court lacks and this county lacks
12 venue over it as an individual or a separate offense. So
13 we couldn't include it as a separate count.

14 THE COURT: Okay. Because the fire was in DeKalb.

15 MS. DIXON: Yes, sir. But our position --

16 THE COURT: That might be information that they
17 would have wanted to know about of this thing got burned
18 up in this place.

19 You may be a hundred percent correct. Can't bring
20 it as a separate count because didn't happen here.

21 MS. DIXON: Yes, sir.

22 THE COURT: But it puts them on notice as to what
23 they've got to defend against.

24 MS. DIXON: I -- and, Judge, the only thing that I
25 can tell you is that I -- I'm not going to sit here and

Exhibit B

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, :
 :
v. : INDICTMENT NO. 23SC189192
 :
FRANCIS CARROLL et al : Judge: FARMER
 :
Defendants. :

**ORDER GRANTING MOTION TO DISMISS AND QUASH INDICTMENT/PLEA
IN ABATEMENT OF INDICTMENT FOR LACK OF PROSECUTORIAL
AUTHORITY**

This case is before the Court on Defendant’s Motion to Dismiss/Plea in Abatement arguing the Attorney General (AG) lacked the legal authority to bring the RICO charges set forth in Count One of the above-styled indictment as the Attorney General did not follow proper procedure in securing an indictment on RICO charges. A hearing was held on September 9, 2025. Evidence and argument having been heard, the finds as follows:

The Georgia Constitution sets forth the duties and limitations of District Attorneys: “It shall be the duty of the district attorney to represent the state in all criminal cases in the superior court of such district attorney’s circuit and in all cases appealed from the superior court and the juvenile courts of that circuit to the Supreme Court and the Court of Appeals and to perform such other duties as shall be required by law.” Ga. Const. Art. VI, § VIII, Para. I (d).

It also sets forth the same for of the Attorney General: “The Attorney General shall act as the legal advisor of the executive department, shall represent the state in the Supreme Court in all capital felonies and in all civil and criminal cases in any court when required by the Governor, and shall perform such other duties as shall be required by law.” Ga. Const. Art. V, § III, Para. IV.

The case before the court is not a capital felony before the Supreme Court. The Attorney General acknowledged that no prior authority was granted by the Governor to bring RICO charges. The constitutional provision also allows the Attorney General to perform “such other duties as required by law.”

The Legislature has enabled the Attorney General to prosecute criminal cases through statutory means. The Attorney General is granted concurrent authority to prosecute gang charges pursuant O.C.G.A. § 16-15-4(n) and Domestic Terrorism pursuant to O.C.G.A. § 16-11-223. The RICO statute does not contain any such provision granting the Attorney General the ability to prosecute such cases without being “required by Governor” as set forth in Ga. Const. Art. V, § III, Para. IV.

The State argues that the statutory provisions contained in O.C.G.A. § 45-15-1 et seq., provide the Attorney General authority to bring RICO charges in this case. O.C.G.A. § 45-15-3 sets out the duties of the Attorney General. Specifically, subsection (3) states that it is the duty of the AG “(w)hen required by the governor, to participate in, on behalf of the state...all other criminal or civil actions to which the state is a party.” The AG conceded at the hearing that the governor had not required the AG to bring the charges in the above-styled indictment.

O.C.G.A. § 45-15-10 also sets forth circumstances by which the AG may bring criminal charges; “The AG...is authorized to: (p)rosecute in the criminal court any official, person, firm, or corporation which violates any criminal statute ***while dealing with or for the state*** or any official, employee, department, agency, board, bureau, commission, institution, or appointee thereof,” O.C.G.A. § 45-15-10(1). (emphasis added) The AG argues that the acts of the defendants towards state employees and

property constitute their “dealing with” the state, and thus provide the vehicle through which the AG is permitted to bring RICO charges in the absence of any other authority.

Their reliance is misplaced. In order to determine the proper meaning of O.C.G.A. § 45-15-10 the Court must examine the statute’s plain language, presuming;

“that the General Assembly meant what it said and said what it meant. To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would...[and] if the statutory text is clear and unambiguous, we attribute to the statute its plain meaning, and our search for statutory meaning is at an end.”

Star Residential, LLC v. Hernandez, 311 Ga. 784, 860 SE2d 726 (2021) (quoting Deal v Coleman, 294 Ga. 170, 172-173 (1) (a)). Furthermore, “in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole.” Lyman v Cellchem Intl., 300 Ga. 475, 477, 796 SE2d 255 (2017).

Black’s Law Dictionary defines the word “deal” as;

1. An act of buying and selling; the purchase and exchange of something for profit <a business deal>.
2. An arrangement for mutual advantage <the witness accepted the prosecutor’s deal to testify in exchange for immunity>.
3. An indefinite amount <a great deal of money>.

Black’s Law Dictionary 405 (7th ed.)

The AG would have the court define “deal with” as “engaging with” the state. It argues that any time the state is an alleged victim of a crime, the definition of “deal with” is satisfied. “Deal with” should be include when someone “deals with” an angry (or misbehaving) child. To stretch the definition of “deal with” to this length would lead to absurd results and give the AG much broader powers as those set forth in the state

constitution and the limited number of statutes that give the AG express power to prosecute crimes (see O.C.G.A. §§ 16-15-4(n) and 16-11-223). To expand the definition to such an extent would make the other statutory grants of authority superfluous. It would permit the AG to bring criminal charges any time the state was the alleged victim of a crime. Litter on a state road, get prosecuted by the AG. Open container of alcohol at a Bulldogs game, get prosecuted by the AG. These examples sound farfetched and far down the slippery slope, but they are the reality if the AG were allowed to expand his authority beyond that granted to him. There is no “deal with or for” between the state and the defendants in the case.

At some point the AG’s powers must not intrude upon those constitutionally granted to the District Attorneys of the state. This is that point. The court has not been presented with, nor found any case law itself, that addresses RICO (or any other criminal charges that do not expressly grant the AG concurrent jurisdiction) being brought by the AG without prior approval from the governor. If the AG had sought and received permission from the governor to bring RICO charges, the check on the division of powers would be satisfied. And that permission may still be sought and the charges brought properly, but they were not in this case.

For the above reasons, this court GRANTS the defenses Motion to Quash Count I of this indictment.

This the 30th day of December, 2025.



KEVIN FARMER
Judge, Fulton County Superior Court

Exhibit C

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,

CASE NO. D0293186

PLAINTIFF,

VS.

**JAMES MARSICANO, AKA JAMES
MARSICANA,**

DEFENDANT.

**ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS BASED ON VIOLATION OF
DUE PROCESS AND CONSTITUTIONAL SPEEDY TRIAL RIGHTS**

The above-styled case came before Judge Gregory A. Adams, Superior Court Judge Presiding over the Superior Court of DeKalb County on the 6th day of August, 2025. The State was represented by Deputy Attorney General John Fowler and Defendant, James "Jamie" Marsicano, AKA, James Marsicana, was represented by Attorney Xavier T. de Janon.

This Court, after hearing all the evidence, proffer, and arguments of the parties,

HEREBY ENTERS the following:

FINDINGS OF FACT

1. Defendant was present in court along with Defendant's Counsel.
2. On March 5, 2023, Defendant was arrested based on allegations that Defendant had participated in an incident that occurred earlier that day at the site where the Atlanta Public Safety Training Center was then being constructed. Defendant was held overnight at DeKalb County Jail.

3. On March 6, 2023, the State of Georgia charged Defendant with Domestic Terrorism in DeKalb County through an arrest warrant in the instant case, D0293186.
4. The arrest warrant alleges that the criminal conduct giving rise to the charge occurred within the span of a few hours, at a single location.
5. On March 7, 2023, a DeKalb County Magistrate Judge denied Defendant's bond.
6. On March 23, 2023, this Court held a bond hearing and granted Defendant a secured bond in the amount of \$25,000.00, with conditions requiring Defendant to do the following: turn over U.S. passport to defense counsel for holding; refrain from communicating with any co-defendant; stay away from Georgia; and remain on an ankle monitor. Defendant posted bond and was released.
7. In or around June 2023, the Attorney General's Office took over the prosecution of this case, and the DeKalb County District Attorney's Office withdrew from the prosecution.
8. Since Defendant's bond hearing, there has been no further progression or prosecution of this individual case other than bond modifications made at Defendant's request.
9. On August 29, 2023, the Attorney General indicted Defendant in Fulton County under the Racketeer Influenced and Corrupt Organizations ("RICO") Act, Fulton County Case 23SC189192, in a RICO Conspiracy accusation, O.C.G.A. § 16-14-1(c).
10. The Fulton County indictment's specific accusations against Defendant are based on the same set of facts alleged in the arrest warrant of this case. The same officer that

testified against Defendant for the Fulton County indictment also sought and obtained the instant arrest warrant against Defendant in this case.

11. The Attorney General's Office asserts that the delay in indictment in this case is due to a large amount of evidence and its "ongoing" investigation. But it does not dispute that the Fulton County case, based on the same underlying factual allegations with respect to Defendant, was indicted nearly two years ago and has proceeded in course. On June 3, 2025, the Attorney General's Office moved to join Defendant's Fulton County case with that of Ayla King, a co-defendant who timely filed a statutory demand for a speedy trial and is expected to be tried first. As with Defendant, the only allegations in the Fulton County RICO case that are specific to Ayla King arose from the same March 5, 2023 incident that is the basis of the instant case.
12. Despite its reassertion of factual allegations and a theory of criminal liability against Defendant in open court, the Attorney General's Office has not indicted this matter or even attempted to do so.
13. More than twenty-nine (29) months after Defendant's charging in this case, construction has been completed on the Atlanta Public Safety Training Center and physical evidence has become forever lost according to Defendant's Counsel. The Attorney General's Office disclaims responsibility but did not establish that the evidence has been preserved.
14. Defendant cannot otherwise challenge this unindicted case.

15. In late 2024, the North Carolina Board of Law Examiners (“Board”) authorized Defendant to sit for the February 2025 bar exam. Defendant took and passed the North Carolina bar exam to become a licensed North Carolina attorney.
16. In April 2025, the Board ordered a Character and Fitness Hearing due to this pending charge. As submitted by Defendant, the Board informed Defendant that it would not consider Defendant’s eligibility for a bar license while this charge is pending.
17. Defendant made a demand for a speedy prosecution and trial on March 1, 2024.
18. Defendant made a second demand for a speedy prosecution and trial on May 16, 2025.
19. More than twenty-nine (29) months have passed since the arrest occurred.
20. More than twenty-nine (29) months have passed since the arrest warrant was issued.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter in this action.
2. Defendant’s Due Process rights have been violated, as follows:
 - A. Defendant and Defendant’s defense have been prejudiced due to the passage of time. The Attorney General’s Office is prosecuting Defendant for the same criminal conduct in another indictment, forcing a defense of this case by proxy. Moreover, essential physical evidence may be lost. The State disclaims responsibility for any loss of evidence occurring on private property and suggests that Defendant’s remedy against destruction of

evidence is *ex post facto* cross-examination of police at a jury trial. In addition, this unindicted case has caused negative publicity against Defendant, yet because there has been no indictment, there is no avenue for Defendant to challenge the allegations in this case. The personal and professional consequences that Defendant has faced as a result of this indefinite charge, without a legal forum in which it may be timely challenged, are forms of actual prejudice to Defendant.

B. The Attorney General's Office appears to have delayed this matter in order to gain a tactical advantage over the defense. The State is prosecuting Defendant in another county, based on the same factual allegations with regard to Defendant, as those underlying this case. As reflected in the RICO Conspiracy indictment, the investigation of these factual allegations against Defendant has ended, yet the Attorney General's Office has not indicted or even attempted to indict Defendant in this case in 29 months.¹

¹ At the hearing on this matter, the Attorney General's Office argued that the investigation was ongoing and suggested that part of the reason for delay was due to its obligation to only present matters to a grand jury that it believes in good faith can be proven beyond a reasonable doubt. But this explanation is undermined by the fact that the RICO Conspiracy indictment alleges that Defendant participated in "Domestic Terrorism" based upon the same conduct found in this matter's arrest warrant. The Attorney General's Office would not have sought an indictment against Defendant in Fulton County with allegations of "Domestic Terrorism" if it did not believe that it could prove the same case it has failed to indict here.

C. This case is distinguishable from Billingslea v. State, 311 Ga. App. 490 (2011), which the State based its arguments on. In that case, the Court found no deliberate delay by the State when the delay was due to law enforcement's failure to promptly arrest the defendant due to being unable to find him after pursuing multiple leads. Id. at 490, 494. Here, Defendant was arrested by and available to the State on the same date as the alleged offense, and the 29-month delay is solely attributable to the State's deliberate decision not to seek an indictment in this county, while doing so promptly and with no issue in another county.

D. Considering all of the facts and arguments presented by both parties, the State's delay in prosecuting this case has violated Defendant's Due Process rights under Ga. Const. art. I, § I, para. I, and U.S. Const. amend. V and XIV.

3. In addition, Defendant's Speedy Trial rights have been violated, as follows:

A. The State's 29-month delay in bringing forth a trial is presumptively prejudicial, triggering a balancing of the Barker-Doggett factors. Johnson v. State, 300 Ga. 252, 257 (2016). All factors weigh in favor of Defendant, as follows:

i. Although Defendant is accused of a serious felony, the underlying criminal conduct alleged is relatively straightforward, limited to

events occurring over the span of only a few hours in a single location. Over 29 months is a lengthy delay to bring this offense to trial. Nor can the delay be attributable in any part to Defendant, who has never failed to respond to this Court and has proactively sought this Court's intervention.

- ii. The Attorney General's Office has not provided sufficient reason for the 29-month delay in this case. Even if the investigation for this case was complex, the State had no difficulty in indicting Defendant on the same alleged criminal conduct almost two (2) years ago. The State is solely responsible for the lack of an indictment in this matter, let alone a trial. Furthermore, as explained above, the State's delay appears to be deliberate, weighing heavily against it. Burney v. State, 309 Ga. 273 (2020). Inexplicably, the Attorney General's Office has yet to prosecute the case it took from the Dekalb County District Attorney's Office after the latter withdrew.
- iii. Defendant has proactively asserted the right to a speedy trial twice over the span of the past two years. The Attorney General's Office has taken no apparent action in response to Defendant's repeated

assertions of the right to a speedy trial, and the Court is powerless to set the matter for trial in the absence of an indictment.

iv. Finally, Defendant has suffered not only presumptive prejudice, but demonstrated actual personal and legal prejudice from the delay in prosecuting this case in the form of incarceration, bond conditions, negative publicity, a pause on Defendant's professional career and diminished ability to adequately prepare a defense.

B. Since the delay is presumptively prejudicial and all Barker-Doggett factors weigh in favor of Defendant, the State's delay in prosecuting this case has violated Defendant's Speedy Trial rights under Ga. Const. art. I, § I, para. XI, and U.S. Const. amend. VI.

WHEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED AND DECREED THAT:

- I. Defendant's Motion to Dismiss Based on Violation of Due Process and Constitutional Speedy Trial Rights is **GRANTED**; and
- II. This case is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED THIS 14th day of August, 2025.



Hon. Gregory A. Adams
Superior Court Judge Presiding