

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

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DISTRICT COURT
WESTERN DISTRICT OF KY
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CRIMINAL ACTION NO. 3:06MJ-230

UNITED STATES OF AMERICA

PLAINTIFF

vs.

STEVEN D. GREEN

DEFENDANT

UNITED STATES' UNOPPOSED MOTION TO CONTINUE ARRAIGNMENT
DUE TO ANTICIPATED DELAY IN INDICTMENT, AND FOR AN EXCLUSION OF
DELAY FROM SPEEDY TRIAL CALCULATION

Comes the United States of America, by counsel, and moves the Court to enter the attached tendered order continuing the arraignment of this matter currently scheduled for August 8, 2006, for approximately ninety (90) days to November 8, 2006. The United States anticipates that an indictment in this action will not be filed until October 18, 2006, at the earliest, and requests that the period of delay from the Defendant's initial appearance until the filing of an indictment be excluded in computing time under the provisions of the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) and (B), on the grounds that such delay in filing an indictment is in the interests of justice.

The United States has conferred with counsel for the Defendant, Steven D. Green, regarding this motion, and has been authorized to advise the Court that this motion for a continuance and for delay in filing an indictment is unopposed.

Defendant Green has been charged, in a criminal complaint, with multiple counts of murder and one count of aggravated sexual abuse. The charged conduct is alleged to have occurred on or about March 12, 2006, in Iraq, but only came to light on or about June 20, 2006, during a soldier's combat stress debriefing. The Louisville Division of the Federal Bureau of Investigation was first notified of the allegations surrounding the conduct on or about June 27, 2006. A federal Criminal Complaint was filed in the Western District of Kentucky on June 30, 2006, and an arrest warrant issued. Green was arrested the same day in North Carolina, and had an initial appearance in Charlotte, North Carolina, on July 3, 2006. Green was ordered removed to the Western District of Kentucky by the Magistrate Judge in Charlotte, and had his initial appearance in Kentucky on July 6, 2006.

Pursuant to the Speedy Trial Act, an indictment charging an individual with the commission of an offense "shall be filed within thirty days from the date on which such individual was arrested." 18 U.S.C. § 3161(b). Because Green was arrested on June 30, 2006, the Speedy Trial Act clock for filing the indictment began running on that date. The Speedy Trial Act, however, permits the district court to grant extensions of time in limited circumstances, and certain periods of time are excluded both when calculating the thirty-day deadline, as well as the seventy-day deadline by which the case must be tried.¹ Counting the time necessary for removal, the date for filing an indictment would fall on or about August 5, 2006.

¹For example, 18 U.S.C. § 3161(h)(1)(G), excludes the period of delay resulting from any proceeding relating to the removal of a defendant from another district. So, any time attributable to the Defendant's removal from the Western District of North Carolina to the Western District of Kentucky would be excluded in calculating the time in which an indictment must be presented.

Most importantly, the Speedy Trial Act provides for the exclusion of time in calculating the thirty-day deadline for filing an indictment:

Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

18 U.S.C. § 3161(h)(8)(A).

The factors that a judge must consider when deciding whether to grant a continuance include:

Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

18 U.S.C. § 3161(h)(8)(B)(iii).

Green was arrested on June 30, 2006, and had his initial appearance in the Western District of Kentucky on July 6, 2006, at which time arraignment was set for August 8, 2006. This date was set on the assumption that an indictment would be presented to the grand jury within the thirty-day time period specified under the Speedy Trial Act.

The Affidavit in support of the Criminal Complaint identified sources of information who have been interviewed and given statements implicating themselves in a conspiracy with Defendant Green to commit the crimes alleged in the Criminal Complaint. The United States Attorney's Office has been advised that on July 8, 2006, charges were brought under the Uniform Code of Military Justice against five soldiers stationed in Iraq. Those soldiers are members of

the 101st Airborne Division and an Article 32 hearing is scheduled to be convened in Iraq on August 6, 2006.

The criminal prosecution of Green in the Western District of Kentucky involves the coordinated efforts of military prosecutors in Iraq with Department of Justice prosecutors in the United States. It involves the coordinated efforts of Army CID investigators and FBI agents both in Iraq and in the United States. It involves a crime scene located thousands of miles from the Western District of Kentucky, as well as witnesses and other items of evidence located far from here, and the Departments of Army and Justice will be necessary components of the prosecutions. Information about the charged offenses was first disclosed to the Army's Criminal Investigation Division just three weeks ago, and important statements taken in Iraq by Special Agents with the Criminal Investigation Division have been provided just within the last two weeks. The same evidence and witnesses are necessary components in both prosecutions, and it is unreasonable to expect that witnesses and evidence from Iraq will be available almost simultaneously to military prosecutors in Iraq and Department of Justice prosecutors in the Western District of Kentucky. Military prosecutors are preparing for an Article 32 hearing which is scheduled to begin on August 6, 2006, and evidence and witnesses necessary to the military prosecution, as well as the civilian prosecution of Green in the United States, should remain in Iraq until completion of the Article 32 hearing.

While the public and the defendant both have an interest in a speedy trial, the public is not served by an indictment which is presented in haste. If there were ever a case in which it was unreasonable to expect return and filing of an indictment with the thirty days required by subsection 3161(b), and where the ends of justice are best served by allowing the United States

additional time to present an indictment, it is this case, and it is within the Court's discretion to grant such an extension. See United States v. Gamboa, 439 F.3d 796, 803 (8th Cir. 2006) (excluding pre-indictment time when grand jury not available and finding it unreasonable for government to gather witnesses and quickly present its case); United States v. Murray, 771 F.2d 1324, 1327-28 (9th Cir. 1985) (excluding sixty days pre-indictment and stating, "In cases of relative complexity, with multiple defendants and ongoing investigations . . . it may be quite unreasonable to expect the preparation and return of an indictment within thirty days"); United States v. Long, 858 F.Supp. 601, 604 (N.D.W.Va. 1994) (finding justice would not be served unless government provided with adequate opportunity to present matter to grand jury within a reasonable period of time).

The Court should grant the continuance requested, upon its finding, based on the foregoing factors, that delay in filing of an indictment would serve the interests of justice, and that the interests of justice outweigh the best interests of the public and the defendant in a speedy trial. As set forth in the order tendered with this motion, the Court must make specific findings in support of an "ends of justice" continuance. Sender v. United States, 126 S. Ct. 1976 (2006); 18 U.S.C. § 3161(h)(8)(A).

In addition, the United States is currently preparing an official request for evidence to the government of Iraq. After translation, the Departments of Justice and State will submit the request to the government of Iraq. The United States expects official transmittal of the request by August 15, 2006.

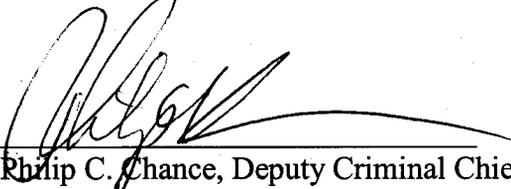
As soon as the request has been made, the government anticipates filing a second motion for exclusion of time under 18 U.S.C. § 3161(h)(9). This subsection provides for exclusion of

time under the Speedy Trial Act, not to exceed one year, upon the Court's finding that an official request for evidence has been made and that it reasonably appears that evidence is, or was, in the foreign country of request. The motion under subsection 3161(h)(9) will provide the Court an additional basis for the instant ninety-day request for exclusion of time under the Speedy Trial Act.

Wherefore, the United States requests that the Court grant this unopposed motion and continue the Defendant's arraignment, set for August 8, 2006, to November 8, 2006, and that the intervening period be excluded in calculating the time in which the indictment must be presented pursuant to 18 U.S.C. § 3161(h)(8).

Respectfully submitted,

DAVID L. HUBER
United States Attorney



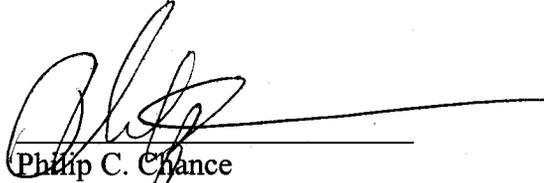
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing response was mailed this 19th day of July, 2006, to Scott T. Wendelsdorf, Federal Defender, and Patrick J. Bouldin, Assistant Federal Defender, 200 Theatre Building, 629 Fourth Avenue, Louisville, Kentucky 40202, counsel for Defendant, Steven D. Green.


Philip C. Chance
Assistant U.S. Attorney