

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

v.

***ELECTRONICALLY FILED***  
**CRIMINAL ACTION NO. 3:06MJ-230**

**STEVEN D. GREEN**

**DEFENDANT**

**UNITED STATES' UNOPPOSED MOTION FOR SPEEDY  
TRIAL ACT EXCLUSION OF TIME DUE TO SUBMISSION OF AN  
OFFICIAL REQUEST FOR EVIDENCE TO A FOREIGN GOVERNMENT**

Comes the United States of America, by counsel, and moves the Court to enter the attached tendered order to exclude speedy trial time in calculating the thirty-day period to file the indictment due to the government's submission of an official request for evidence to a foreign government. The Court previously granted the government's motion to continue arraignment and to exclude the intervening time from speedy trial calculation on grounds that such delay is in the interests of justice under 18 U.S.C. § 3161(h)(8). *See* Order Granting Gov't Mot., July 20, 2006. The instant motion does not substitute for the Court's order of July 20, 2006 or the grounds thereof. Rather, it provides an *additional* and *alternative* basis to exclude time under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(9).<sup>1</sup> Although subsection (h)(9) excludes speedy trial time for pre and post-indictment delays of up to one year, the government presently does not seek to continue the currently scheduled arraignment date of November 8, 2006. The United States has conferred with counsel for the defendant regarding this motion, and has been

---

<sup>1</sup>

The grounds for the instant motion were not included in the government's prior motion to exclude time in the interests of justice because an official request for evidence to a foreign country had not yet been made.

authorized to advise the Court that this motion to exclude pre-indictment time until November 8, 2006, is unopposed.

Defendant Green has been charged in a criminal complaint with four counts of murder and one count of aggravated sexual abuse. Allegedly, on March 12, 2006, while Green was on active duty in the U.S. Army, he entered a home in Mahmudiyah, Iraq, and shot and killed four Iraqi nationals, including a young woman whom he allegedly raped before murdering. Green allegedly killed the victims with an AK-47 found at the victims' home. According to the Criminal Complaint, the AK-47 was thrown into a canal after Green left the house.

The 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. Pursuant to 18 U.S.C. § 3161(b), 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 to exclude certain periods of time when calculating the thirty-day deadline for filing an indictment, and the seventy-day deadline for commencing trial.

On July 19, 2006, the government moved to continue defendant's arraignment and exclude pre-indictment time for reasons warranted by the interests of justice. *See* Gov't Mot., July 19, 2006. The Court granted the motion pursuant to 18 U.S.C. § 3161(h)(8) and continued defendant's arraignment to November 8, 2006. *See* Order Granting Gov't Mot., July 20, 2006.

In addition to excluding time in the interests of justice under 18 U.S.C. § 3161(h)(8), the Speedy Trial Act also excludes pre or post-indictment time of up to one year if an official request has been made for evidence in a foreign country. *See United States v. Wardrick*, 141 F.3d 1161, 1998 WL 169223, \*7-8 (4th Cir. 1998) (unpublished) (affirming five-months

excludable time under 18 U.S.C. § 3161(h)(9) for informal telephonic evidence request to Pakistan); *United States v. Schlei*, 122 F.3d 944, 986 (11th Cir. 1997) (affirming continuance of up to one year under 18 U.S.C. § 3161(h)(9) to allow government to obtain deposition testimony in Japan); *United States v. Maksimenko*, 2005 WL 1038784, \*1 (E.M. Mich. April 26, 2005) (slip copy) (excluding five-month period under 18 U.S.C. § 3161(h)(9) for official request for evidence to the Ukraine); *United States v. Serna*, 630 F. Supp. 779, 783 (S.D.N.Y. 1986) (excluding time under 18 U.S.C. § 3161(h)(9) for government's official request for wiretap evidence in Spain). The Speedy Trial Act provides:

(h) The following periods of delay *shall be excluded* in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(9) Any period of delay, not to exceed one year, ordered by a district court upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in section 3292 of this title, has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

18 U.S.C. § 3161(h)(9) (emphasis added). Title 18, United States Code, Section 3292 defines the term "official request" as "a letter rogatory, a request under treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country." 18 U.S.C. § 3292(d).

The United States Department of Justice (the "Department") has made an official request for assistance to the Government of Iraq to obtain evidence for this criminal investigation and prosecution. The official request, signed July 21, 2006, and sealed by the Attorney General on August 3, 2006, is filed under seal for the Court's *in camera*

review. *See Ex. A, (filed under seal)*. The official request describes the desired evidence located in Iraq and the Iraqi government assistance sought by the Department.

The United States Embassy in Baghdad, Iraq, presented the official request to the Iraqi Ministry of Foreign Affairs on or about August 8, 2006. The Embassy's Diplomatic Note, signed by a U.S. Consular Officer, and dated August 8, 2006, is also filed under seal for the Court's *in camera* review. *See Ex. B, (filed under seal)*.

The Department is actively pursuing its official request with the Government of Iraq, and at the present time, the United States does not anticipate seeking additional excludable time beyond the currently scheduled arraignment date of November 8, 2006. If, however, the official request remains unresolved near the arraignment date or as the arraignment date approaches, the United States may petition the court for an additional excludable period of delay under 18 U.S.C. § 3161(h)(9).

Wherefore, the United States respectfully requests that the Court grant this unopposed motion to exclude time, from August 8, 2006, to November 8, 2006, in which the indictment must be presented, pursuant to 18 U.S.C. § 3161(h)(9) of the Speedy Trial Act, on grounds that an official request for evidence and assistance to the Government of Iraq has been made.

Respectfully submitted,

DAVID L. HUBER  
United States Attorney

/s/ Marisa J. Ford  
Marisa J. Ford  
Criminal Chief  
510 W. Broadway, 10th Floor  
Louisville, Kentucky 40202  
(502) 582-5911  
[marisa.ford@usdoj.gov](mailto:marisa.ford@usdoj.gov)

/s/ Brian D. Skaret (w/permission)  
Brian D. Skaret  
Trial Attorney, Domestic Security Section  
950 Pennsylvania Ave. NW, Ste. 7645  
Washington, DC 20530  
(202) 353-0287  
[brian.skaret@usdoj.gov](mailto:brian.skaret@usdoj.gov)

**CERTIFICATE OF SERVICE**

I certify that on this the 15<sup>th</sup> day of September, 2006, the foregoing United States' Unopposed Motion for Speedy Trial Act Exclusion of Time Due to Submission of an Official Request for Evidence to a Foreign Government was electronically filed with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: 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.

/s/ Marisa J. Ford  
Marisa J. Ford  
Assistant United States Attorney