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Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

No. 3:16-cr-00125-BR-1

Plaintiff,

**UNOPPOSED MOTION TO
CONTINUE TRIAL**

v.

SCOTT ALAN WILLINGHAM,

Defendant.

Defendant Scott Alan Willingham, through his attorney, Richard L. Fredericks, moves this Court to continue the trial in the above-entitled case, which is presently scheduled for May 24, 2016, for a period of approximately 28 days to June 21, 2016. The parties expect a two day trial. This motion is made based on the need for the defense to obtain and review discovery, conduct an investigation, prepare for trial, and to accommodate defense counsel's previously scheduled vacation.

Mr. Willingham was arraigned on March 24, 2016. This is the first continuance sought by the defense. This motion is unopposed by Assistant United States Attorney Craig Gabriel. Both counsel agree upon the proposed June 21, 2016, trial setting.

This continuance constitutes excludable delay to pursuant to Title 18, United States Code, Section 3161(h)(7)(A). The ends of justice served by granting this motion outweigh the best interests of the public and Mr. Willingham in a speedy trial because the additional time is necessary to afford defense counsel sufficient time to complete discovery, investigate the case, conduct research, consult with Mr. Willingham, and prepare his case. Mr. Willingham acknowledges his right to a speedy trial under the Speedy Trial Act and agrees that this motion will result in excludable delay under the Act.

RESPECTFULLY submitted this 15th day of April, 2016.

/s/ Richard L. Fredericks
Richard L. Fredericks
Attorney for Defendant

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vs.

SCOTT ALAN WILLINGHAM,

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**DECLARATION OF COUNSEL IN
SUPPORT OF MOTION FOR
RESETTING OF TRIAL DATE**

I, Richard L. Fredericks, declare:

(1) I was appointed to represent Defendant Willingham by order of the Court entered on April 4, 2016.

(2) Mr. Willingham was arraigned on the Indictment in the above-entitled case on March 24, 2016.

(3) The defense expects to receive initial discovery by mail tomorrow. More time is

needed to review the discovery and prepare for trial. This case is related to a 20 plus defendant case and all local Portland area CJA panel attorneys were conflicted out of representing Mr. Willingham. Undersigned counsel is located in Eugene making client consultations and trial preparation more difficult and time consuming.

(4) Defense counsel has a long planned out of the country vacation scheduled for May 22 to June 2, 2016.

(5) Assistant United States Attorney Craig Gabriel has no opposition to the Court granting the instant motion for a resetting of the date set for an estimated two day trial on June 21, 2016.

The Speedy Trial Act provides that “[a]ny information or indictment charging an individual with the commission of an offense shall be filed within 30 days from the date on which such individual was arrested or served with a summons in connection with such charges.” 18 U.S.C. § 3161(b). A defendant must be brought to trial within 70 days of indictment or his initial appearance before the court, whichever is later. 18 U.S.C. §3161(c)(1). However, there are nine statutory exclusions from the computation of the 70-day period. In *United States v. Lewis*, 980 F.2d 555, 561-62 (9th Cir. 1992), the court recognized that the existence of ongoing plea negotiations constituted a proper basis for the entry of an ends of justice, finding per 18 U.S.C. § 3161(h)(8)(A). In *United States v. Fields*, 39 F3d 439, 444-45 (3d Cir. 1994), the court recognized that in appropriate circumstances an “ends of justice” continuance under 18 U.S.C. § 3161(h)(8)(A) should be granted to permit the preparation of pretrial motions. Furthermore, pretrial motion preparation time expressly designated by the court is among the unspecified causes comprehended by the “including but not limited to” language of § 3161(h)(1). *United States v. Hoslett*, 998 F.2d 648, 655 (9th Cir. 1993).

In light of the circumstances set forth above, it is counsel's position that failure to grant the relief requested herein will threaten a miscarriage of justice (18 U.S.C. § 3161(h)(7)(B)(i)). Counsel submits that the ends of justice will be served by granting the relief requested, insofar as said relief is essential to securing Mr. Willingham's constitutional entitlement to an opportunity to have the benefit of effective assistance of counsel (18 U.S.C. § 3161(h)(7)(A)).

In accordance with the terms of 18 U.S.C. § 3161(h)(7)(A), Mr. Willingham stipulates that the Court may find excludable time in this matter, based on the instant request and the ends of justice.

I have discussed this proposed postponement directly with Mr. Willingham. He agrees with the postponement and a new trial setting of June 21, 2016.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct; that the statements heretofore set forth are based on my own knowledge, except where otherwise indicated, and as to those statements I believe them to be true; and that this declaration was executed on April 15, 2016, in Eugene, Oregon.

/s/ Richard L. Fredericks

Richard L. Fredericks
Attorney for Defendant