

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA	)	Criminal No.: H-97-93
	)	
v.	)	Violations:
	)	
MARK ALBERT MALOOF,	)	15 U.S.C. §1
	)	18 U.S.C. § 371
Defendant.	)	FILED 6/13/97

**UNITED STATES' RESPONSE TO DEFENDANT'S  
MOTION TO CONTINUE TRIAL**

The United States, through the undersigned attorney, hereby responds to the defendant's Motion to Continue Trial.

The government has no objection to a reasonable continuance of trial based on the defendant's assertion that his counsel is unable to adequately prepare for trial by July 14, 1997. Defendant has requested that this case be continued for five months until the December 1997 trial calendar. Given that this case involves a single defendant, the government respectfully submits that a shorter continuance would give defense counsel reasonable time to effectively prepare for trial, taking into account the exercise of due diligence.

Moreover, while the defendant has waived his right to a speedy trial (Motion to Continue Trial at 3), the government is concerned that a continuance will violate the Speedy Trial Act, 18 U.S.C. § 3161. See United States v. Willis, 958 F.2d 60, 62-63 (5th Cir. 1992) (provisions of Speedy Trial Act are not waivable by the defendant). In the event this Court grants any continuance, the government respectfully requests that

the Court make a finding on the record that granting such continuance outweighs the best interests of the public and the defendant in a speedy trial pursuant to 18 U.S.C. § 3161(h)(8)(A). See United States v. Jones, 56 F.3d 581, 585 n.9 (5th Cir. 1995) (for continuance to stop clock district court must state on record its reasons for finding that interests of justice outweigh defendant's interest in speedy trial); United States v. Blackwell, 12 F.3d 44, 46-48 (5th Cir. 1994) (periods of delay are not excludable unless the court sets forth ends-of-justice findings either orally or in writing). But see United States v. Williams, 12 F.3d 452, 460 (5th Cir. 1994) (reversal is not in order when reasons for a continuance are patent).

In his Motion, the defendant indicates that the government is denying him discovery in this case. Motion at 6. The government stands ready to fulfill its obligations under Rule 16, Jencks, and Brady. Because the government believes that defense counsel are party to a joint defense agreement and would feel obligated to disclose material otherwise protected by Fed. R. Crim. P. 6 to targets and subjects of the government's ongoing grand jury investigation, the government has filed a Motion for Protective Order in this case. In addition, many of the subjects and targets of the ongoing grand jury investigation are also named defendants in the pending civil case before this Court, Caddell Const. Co., Inc. v. Hiplax Int'l Corp., et al., Master File No. H-96-3490. Given the motion for an order to stay civil discovery pending before this Court in that case, release of criminal discovery without a protective order will severely undermine any such order by the Court as well as seriously compromise the ongoing grand jury investigation. Accordingly, the government has asked this Court to enter a protective order before discovery is made available to the defense.

In conclusion, the government does not object to a reasonable continuance that will allow defense counsel adequate time to prepare for trial and at the same time ensure that this case proceeds expeditiously to trial.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the United States' Response to Defendant's Motion to Continue Trial was sent via Federal Express this \_\_\_\_\_ day of June, 1997, to:

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