

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.) Case No. 12-06001-02,07,10,13,15/19-CR-SJ-GAF
)
SHERRI E. GUTIERREZ,)
BRENDA DE LA CRUZ,)
ELDER ORDONEZ-CHANAS,)
LUIS A. FELIPE-LOPEZ,)
RAFAEL HERNANDEZ-ORTIZ,)
CHRISTOPHER B. ESCOBAR,)
SHAYNA R. VANVACTER,)
JON L. GRIPPANDO, and)
MELISSA SCALLIONS,)
)
 Defendants.)

TRIAL ORDER

Pursuant to a Trial Order entered on March 19, 2012, defendants Deborah Flores, Sherri Gutierrez, Stephen Vanvacter, Sara Gonzalez, Christina Gonzalez, Jessica Gonzalez, Brenda De La Cruz, Martin Llanas-Rodriguez, Julio Llanas-Rodriguez, Elder Ordonez-Chanas, Nelson Bautista-Orozco, Ranfe Hernandez-Flores and Luis Felipe-Lopez were set for trial on November 26, 2012.¹ On September 25, 2012, a superseding indictment was filed, adding the following five defendants: Rafael Hernandez-Ortiz, Christopher B. Escobar, Shayna R. Vanvacter, Jon L. Grippando, and Melissa L. Scallions.

¹ Defendants Flores, Stephen Vanvacter, Sara Gonzalez, Christina Gonzalez, Jessica Gonzalez, Martin Llanas-Rodriguez, Julio Llanas-Rodriguez, Bautista-Orozco, and Hernandez-Flores have entered guilty pleas. Defendant Martin Lara-Rodriguez has an outstanding arrest warrant.

I. TRIAL SETTING

On September 28, 2012, defendant Escobar appeared in court with his counsel, David Guastello, for an arraignment. On October 2, 2012, defendant Scallions appeared in court with her counsel, John Gromowsky, for an arraignment. On October 4, 2012, defendant Shayna Vanvacter appeared in court with her counsel, Christine Blegen, for an arraignment. On October 25, 2012, defendant Grippando appeared with his counsel, Chase Higinbotham, for an arraignment. Counsel for the government, Jess Michaelson, Kate Mahoney or Trey Alford, were present at all four hearings.

A scheduling conference was held on October 26, 2012, during which defendants Escobar, Shayna Vanvacter, Grippando and Scallions discussed the November trial setting. The parties advised they do not object to a continuance of the November trial setting to a date to be determined once a conference with the government and counsel for the other codefendants can be held. Based on a continuance motion filed by defendant Scallions, defendants Escobar, Shayna Vanvacter, Grippando and Scallions will be joined for trial with their codefendants.

On November 1, 2012, defendant Hernandez-Ortiz appeared in court with his counsel, John Lynch, for an arraignment. Counsel for the government, Jess Michaelson, was present for the government. Defendant Hernandez-Ortiz was advised that he was joined with codefendants in this matter and that pursuant to a continuance motion filed by codefendant Gutierrez, the case will be continued to the joint criminal jury trial docket commencing May 28, 2013. Defendant Hernandez-Ortiz does not object to this trial date.

A status conference was held with defendants Gutierrez, De La Cruz, Ordonez-Chanas and Felipe-Lopez on November 13, 2012, during which a motion for continuance filed by

defendant Gutierrez was discussed. The parties agreed to a continuance of the case to the joint criminal jury trial docket commencing May 28, 2013.

Accordingly, defendants Gutierrez, De La Cruz, Ordonez-Chanas, Felipe-Lopez, Hernandez-Ortiz, Escobar, Shayna Vanvacter, Grippando and Scallions are set on the **May 28, 2013 Joint Criminal Jury Trial Docket**. A **pretrial conference** is set for **May 14, 2013**.

The Speedy Trial Act of 1974, as amended, mandates the commencement of the trial of a defendant within seventy days from the defendant's first appearance before a judicial officer of the court in which the charge is pending. In computing the seventy-day time period, the periods of delay set forth in 18 U.S.C. § 3161(h) are to be excluded. Any period of delay resulting from a continuance granted at the request of a defendant is excludable if the Court finds the ends of justice served by the taking of such action outweigh the best interests of the public and the defendant in a speedy trial, provided the Court sets forth the reason for such finding. See 18 U.S.C. § 3161(h)(7)(A).

The Court finds that it would be unreasonable to expect defense counsel to prepare this case adequately for trial prior to May 28, 2013, and that failure to grant a continuance would deny defense counsel the reasonable time necessary for effective preparation and, thus, would deny the defendants their right to effective assistance of counsel. The Court finds the ends of justice served by granting a continuance outweigh the best interests of the public and the defendants in a speedy trial.

Pursuant to 18 U.S.C. § 3161(h), the time between the date of arraignment of defendants Hernandez-Ortiz, Escobar, Vanvacter, Grippando and Scallions and June 7, 2013, the last day of the May 28, 2013 Joint Criminal Jury Trial Docket, shall be excluded in computing the time

within which their trial must commence. The time between the date of this Trial Order and June 7 shall be excluded in computing the time within which the trial of defendant Gutierrez, De La Cruz, Ordonez-Chanas and Felipe-Lopez must commence.

In order to ensure that this case is ready for trial as scheduled, the following time schedule for discovery and pretrial filings is established.

II. PRETRIAL FILINGS

A. PRETRIAL MOTIONS

On or before March 1, 2013, the parties shall file any relevant pretrial motions. Any suggestions in opposition shall be filed **on or before March 15, 2012**.

B. RELEVANT OFFENSE CONDUCT

Within ten days of trial or a change of plea hearing, the government is directed to disclose all information in its possession on which it will rely to establish “relevant offense conduct” or to establish an upward departure under the Federal Sentencing Guidelines.

C. RULE 404(b) EVIDENCE

The government is directed to provide written notice of all prior and subsequent acts and convictions intended to prove knowledge, intent or other elements identified in Rule 404(b) of the Federal Rules of Evidence **no later than thirty days prior to trial**.

D. EXPERT WITNESSES

1. RULE 16 EXPERTS

- a. **No later than ten days prior to the pretrial conference**, the government shall disclose to the defendants a written summary of testimony that the Government intends to use under Rules 702, 703 or 705 of the Federal Rules of Evidence during its case-in-chief at trial. The written summary should identify the witnesses, describe the witnesses’ opinions, the bases and the reasons for the opinions, and the witnesses’ qualifications.
- b. **No later than five days prior to the pretrial conference**, defendants shall disclose to the government a written summary of testimony that the defendants intend to use under Rules 702, 703 or 705 of the Federal Rules

of Evidence as evidence at trial. The written summary should identify the witnesses, describe the witnesses' opinions, the bases and the reasons for the opinions, and the witnesses' qualifications.

2. MENTAL HEALTH EXPERTS/EVIDENCE

- a. **On or before the date set for filing pretrial motions**, the defendants shall file a notice in writing which complies with the requirements of Rule 12.2 of the Federal Rules of Criminal Procedure stating:
- (1) Whether a defendant intends to rely upon the defense of insanity at the time of the alleged offense; and
 - (2) Whether a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of guilt.
- b. If a defendant gives notice under Rule 12.2(b) of an intent to present expert testimony on defendant's mental condition, **within two weeks of giving notice under Rule 12.2**, the defendant shall identify the experts and provide a summary of the witnesses' opinions, the bases and reasons for those opinions and the witnesses' qualifications.
- c. **Within thirty days of the filing of a defendant's notice of intent to rely on testimony on defendant's mental condition**, the government shall disclose to the defendant a written summary of testimony the government intends to use under Rules 702, 703, or 705 as evidence at trial on the issue of the defendant's mental condition. The summary shall describe the witnesses' opinions, the bases and the reasons for those opinions, and the witnesses' qualifications.

E. WITNESS LISTS

The government and the defendants are directed to supply in writing witness lists which shall include the name and address of each witness whom counsel intends to call in its case-in-chief, together with any record of prior felony convictions for such witness, **no later than the Friday prior to the pretrial conference**. If a new witness is discovered after counsel prepares its witness list, either prior to trial or during trial, counsel shall promptly notify opposing defense and provide the discovery identified above.

1. WITNESS INDUCEMENTS

No later than the Friday before the pretrial conference, the government is directed to provide written disclosure of: (a) the names(s) and address(es) of the witness(es) to whom the government has made a

promise; (b) all promises or inducements made to any witness(es); (c) all agreements entered into with any witness(es); and (d) the amount of money or other remuneration given to any witness(es).

2. **INFORMANTS**

Unless the government has made a claim of privilege as to an informant, **no later than the Friday before the pretrial conference**, the government is directed to provide: (a) the name(s) and address(es) of the informant(s); (b) all promises or inducements to the informant(s); (c) all agreements entered into with the informant(s); (d) the amount of money or other remuneration given to the informant(s); (e) identification of the informant's prior testimony; (f) evidence of psychiatric treatment; (g) evidence of the informant's narcotic habit; and (h) the name, address and phone number for the lawyer(s) for the informant(s) if represented by counsel. If an informant objects to the disclosure of his or her address, the government shall produce the informant to defense counsel for a determination of whether or not the informant will consent to an interview.

F. **EXHIBIT LISTS**

The government and the defendants are directed to supply in writing exhibit lists which shall include a description of each exhibit, pre-marked for identification, that counsel intends to offer in its case-in-chief **no later than the Friday prior to the pretrial conference**.

G. **MOTIONS IN LIMINE**

No later than the Friday prior to the pretrial conference, the parties should file any motions in limine seeking to exclude evidence from trial. Any suggestions in opposition to the motions in limine should be filed **within five days** after the motion is filed.

H. **STIPULATIONS**

Any proposed stipulations should be provided in writing to opposing counsel and the Court **no later than the Friday before the pretrial conference**.

I. **STATEMENTS PRESENTING BRUTON ISSUES**

Any statements of a co-defendant which the government intends to offer at trial and which present Bruton issues along with the proposed redactions **should be presented to the Court no later than thirty days prior to trial**.

IT IS SO ORDERED.

/s/ Sarah W. Hays

SARAH W. HAYS
UNITED STATES MAGISTRATE JUDGE