

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	11-00046-01/09-CR-W-ODS
JAMES ALLEN JACOBS, JR.,)	
JOHNNY ERWIN SMITH,)	
AMANDA LYNN SCATES,)	
LINDSEY NICOLE HILLYARD,)	
JEFFERY MARSHALL JONES,)	
TERRY WAYNE THOMAS,)	
WILLIAM CHESTER GARRETT,)	
TIM MICHAEL WILSON,)	
and)	
RICHARD MARK GANGEL,)	
)	
Defendants.)	

ORDER CONTINUING CURRENT TRIAL SETTING

Before the court is a motion to continue filed by defendant Lindsey Hillyard. In support of the motion, defendant states in part as follows:

1. Ms. Hillyard and her co-defendants all face serious felony charges that could result in substantial incarceration including life in prison upon conviction. As of this filing, defense counsel have been provided well in excess of 500 pages of discovery information which is and continues to be under review and study. The case is complicated and complex and since the return of the indictment in this case, there has been another indictment of individuals who appear to be connected to this case which may well require yet additional review and investigation.

2. Undersigned counsel for defendant Hillyard has discussed a continuance with AUSA Rhodes and he is not opposed to this continuance and is agreeable to and would prefer the February 2012 regular trial docket setting. Ms. Hillyard is indicted with eight other co-defendants. As of this filing, no defendant has entered a guilty plea and it is therefore presumed at this point that all are for trial. In the event a multi-defendant trial were to be conducted, even assuming one-half or more of the defendants were to ultimately negotiate a settlement, the trial preparation time alone of marshaling witnesses and exhibits and filing motions in limine would likely consume several weeks or more. Moreover, final trial preparation could not begin in earnest until each defendant has thoroughly reviewed the discovery in this case and that which may become available in the newly indicted related case.

3. In accordance with local rules, counsel has contacted the attorneys who represent the co-defendant's [sic] in the case to determine their respective views as to

whether they object to or are in agreement with a continuance and to determine preferable dates. Counsel for defendants Jacobs, Smith, Scates, Jones, Thomas, and Garrett have on [sic] objections to this request. Counsel was unable to speak with Counsel for defendants Wilson and Gangel, although the Assistant US Attorney believes, based on conversation with Mr. Gromowsky, that Gangle also has no objection.

4. Counsel submits that defendants are entitled to a continuance under the provisions of Title 18, United States Code, Section 3161(h)(8)(B), in that: a) trial on the current docket would result in a miscarriage of justice; b) the case is significant in terms of the outcome for the reasons stated in the above paragraphs; c) it is unreasonable to expect the attorneys and the defendants to be ready for trial by the currently scheduled trial date; and, d) failure to grant the continuance would likely prevent undersigned counsel from being able to adequately prepare and present the defense case for his individual client.

The Speedy Trial Act of 1974, as amended, mandates the commencement of the trial of a defendant within 70 days from the defendant's first appearance before a judicial officer of the court in which the charge is pending. In computing the 70-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 taking such action outweigh the best interest of the public and the defendant in a speedy trial, provided the court sets forth the reason for such finding.

In light of the circumstances described above, I find that the ends of justice served by removing this criminal action from the joint criminal jury trial docket which will commence January 9, 2012, and continuing the trial until the joint criminal jury trial docket which will commence February 13, 2012, outweigh the best interest of the public and the defendant in a speedy trial.

In accordance with § 3161(h)(7)(C), congestion of the court's calendar was not considered in deciding to remove this case from the joint criminal jury trial docket which will commence January 9, 2012.

In light of the circumstances described above, it is

ORDERED that this criminal action is removed from the joint criminal jury trial docket which will commence January 9, 2012. It is further

ORDERED that this criminal action is set for trial on the joint criminal jury trial docket which will commence February 13, 2012. It is further

ORDERED that the pretrial conference set for December 28, 2011, is continued pending further order of the court. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h)(7), the time between the date of this order and February 13, 2012, shall be excluded in computing the time within which the trial of this criminal action must commence.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
December 20, 2011