

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	10-00320-04-09-12-14-CR-W-DGK
PETER FLORES,)	
JASON RICHARDSON,)	
DESHAUN CERUTI,)	
RAFAEL ZAMORA,)	
)	
Defendants.)	

ORDER CONTINUING CURRENT TRIAL SETTING

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

2. On or about October 19, 2012, predecessor counsel for Mr. Ceruti filed a motion to continue the previous trial setting in this matter of October 22, 2012, due to counsel's serious health issues. (Doc. 550). Predecessor counsel also filed simultaneously a motion to withdraw, again due to serious health concerns. (Doc. 551). This Court granted the motion to continue the trial setting to the next trial docket to begin on November 26, 2012. (Doc. 556). In its Order, the Court indicated that the case was being continued for one docket to allow substitute counsel time to determine how long it will take to prepare for trial and to file a motion to continue, if necessary. The Court also granted predecessor counsel's motion to withdraw (Doc. 558).

3. The undersigned counsel was appointed on or about October 19, 2012. (Doc. 558). In conferring with the Government and predecessor counsel, it has been determined that there are approximately 870 pages of written discovery, as well as numerous recorded phone conversations. There have been a number of pretrial motions and hearings with respect to Mr. Ceruti. It appears that most, if not all, of the discovery process has been completed. There may be additional fact investigation required once counsel has had a sufficient opportunity to review this case. The undersigned counsel has received Mr. Ceruti's file from predecessor counsel and has begun the file and discovery review process. Due to counsel's trial calendar and other client obligations, there is not sufficient time between the date of the appointment of counsel and November 26 for counsel to be prepared for trial. Additional time is being sought for counsel to fully review the written discovery and the recorded phone calls, to meet and confer with the client regarding trial strategies, to review all pleadings and hearings that have been conducted in this case prior to counsel's appointment, to analyze all factual and legal issues in this matter, and to conduct any further factual investigation or legal research that may be required.

4. The undersigned counsel is respectfully requesting a continuance from the November 26, 2012, trial docket to the April 22, 2013, docket. The undersigned has a January 2013 trial setting in United States v. Ji Li Huang et al., Case No. 12-00296-02-CR-W-BCW. The undersigned also anticipates filing a motion to continue the trial setting in United States v. Pedro Pablo-Solis, Case No. 12-06004-02-CR-W-BCW, that will request a February 2013 trial docket. The undersigned counsel has a long-planned family vacation over Spring Break which conflicts with the March 2013 trial docket. A setting in April 2013 does not conflict with these other settings.

5. The undersigned counsel has conferred with the remaining parties in this case. On behalf of the United States, AUSA Bruce Rhoades does not object to a continuance to the April 2013 trial docket. John Gromowsky, who represents Jason Richardson, does not object to a continuance to the April 2013 trial docket. Eugene Harrison, who represents Rafael Zamora, does not object to a continuance to the April 2013 trial docket. Charles McKeon, who represents Peter Flores, has indicated that his client is in custody and will likely object to the continuance request.

6. The undersigned counsel has also met and conferred with Mr. Ceruti regarding this motion and the request for an April 2013 trial setting. Mr. Ceruti consents and agrees with the continuance request and has no objection to an April 2013 trial setting.

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 November 26, 2012, and continuing the trial until the joint criminal jury trial docket which will commence April 22, 2013, 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 November 26, 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 November 26, 2012. It is further

ORDERED that this criminal action is set for trial on the joint criminal jury trial docket which will commence April 22, 2013. It is further

ORDERED that the pretrial conference set for November 14, 2012, 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 April 22, 2013, shall be excluded in computing the time within which the trial of this criminal action must commence.

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

Kansas City, Missouri
November 1, 2012