

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	09-00121-01/12-CR-W-DGK
GILBERTO LARA-RUIZ, et al.,)	
)	
Defendants.)	

ORDER OF CONTINUANCE

On April 9, 2009, the Grand Jury returned an multi-count indictment charging defendant Lara-Ruiz with occupying a position of organizer, supervisor or manager of an ongoing criminal enterprise and obtaining substantial income or resources from it, which involved possession with intent to distribute and distribution of a mixture or substance containing methamphetamine in an amount of at least 10 kilos [200 times that required in Title 21, United States Code, Section 841 (b)(1)(B), all in violation of Title 21, United States Code, Sections 848 (a)(b)(c) and (s). The Indictment also charges the remaining defendants with conspiracy to distribute a mixture or substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in an amount of five-hundred (500) grams or more, contrary to the provisions of Title 21, United States Code, Section 841(a)(1) and (b)(1)(A), all in violation of Title 21, United States Code, Section 846. This criminal action is currently set for trial on the joint criminal trial docket which commences November 1, 2010.

On September 20, 2010, defendant Gilberto Lara-Ruiz, by and through counsel, filed a motion for continuance and suggestions in support thereof. The suggestions in support of the defendant's motion for continuance state, in part, as follows:

Defense counsel filed a Motion to Dismiss the Indictment (Document 154) on June 14, 2010. The Motion to Dismiss was heard by Magistrate Judge Maughmer on August 3, 2010. The court's ruling on the motion will directly impact the issue of the trial as certain counts of the Indictment may be dismissed. Trial strategy may change and certain issues will need to be discussed with the defendant depending on the court's holding.

Although detained pending trial, Defendant consents to this continuance request, and waives his rights under the Speedy Trial Act.

Counsel for the government does not object to this request for continuance.

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 the taking of 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.

Section 3161(h)(8)(C) provides that a continuance shall not be granted because of general congestion of the Court's calendar. In ordering this case removed from the joint criminal jury trial docket which will commence November 1, 2010, and continuing the trial until the joint criminal jury trial docket which will commence January 10, 2011, the Court is not doing so because of congestion of its calendar.

The Court finds that:

1. In light of the circumstances set out in the above-quoted portion of the suggestions in support of the motion for continuance, it would be

unreasonable to expect defense counsel to prepare this criminal action adequately for trial prior to January 10, 2011;

2. In light of the circumstances set out in the above-quoted portion of the suggestions in support of the motion for continuance, failure to remove this criminal action from the joint criminal jury trial docket which will commence November 1, 2010, and grant a continuance likely would result in a miscarriage of justice;
3. In light of the circumstances set out in the above-quoted portion of the suggestions in support of the motion for continuance, failure to remove this criminal action from the joint criminal jury trial docket which will commence November 1, 2010, and grant a continuance would deny defense counsel the reasonable time necessary for effective preparation and thus would deny the defendant his right to effective assistance of counsel; and
4. In light of the circumstances set out in the above-quoted portion of the suggestions in support of the motion for continuance, the ends of justice served by removing this criminal action from the joint criminal jury trial docket which will commence November 1, 2010, and granting a continuance outweigh the best interest of the public and the defendant in a speedy trial.

It is therefore,

ORDERED that the motion for continuance of this criminal action filed by defendant Gilberto Lara-ruiz on September 20, 2010 (Doc. No. 193), is GRANTED as to all defendants and that this criminal action is removed from the joint criminal jury trial docket which will commence November 1, 2010. It is further

ORDERED that this criminal action is set for trial on the joint criminal jury trial docket which will commence January 10, 2011. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h), the time between the date of this Order and January 10, 2011, shall be excluded in computing the time within which the trial of this criminal action must commence.

/s/ JOHN T. MAUGHMER

JOHN T. MAUGHMER
United States Magistrate Judge

Kansas City, Missouri