

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	09-00121-01/04/12-CR-W-DGK
GILBERTO LARA-RUIZ,)	
BELINDA HEASTAN,)	
NATHAN MICHAEL MCKEE,)	
)	
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 January 10, 2011.

On December 2, 2010, defendant Belinda Heastan, 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:

While on bond, Heastan has been charged in Buchanan County in 10BU-CR2060 with Possession of a Controlled Substance (Class C felony) and in 10BU-CR2033 with Forgery (Class C felony). She was held in custody on those charges, but has recently been returned to Caldwell County Jail on a federal writ. These new charges have disrupted the defense and impacted how the case will be resolved. More time is needed for undersigned to effectively represent Heastan to achieve the desired and likely non-trial outcome.

AUSA Bruce Rhoades and Jackie Rokusek, counsel for remaining co-defendant Lara-Ruiz, have no objection to this request. Further, the parties ask that if a continuance is granted, the case be set on the May, 2011 docket for the reason that each counsel has numerous trials set and cannot be ready before that time. 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 January 10, 2011, and continuing the trial until the joint

criminal jury trial docket which will commence May 23, 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 May 23, 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 January 10, 2011, 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 January 10, 2011, 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 January 10, 2011, 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 Belinda Heastan on December 2, 2010 (Doc. No. 208), is GRANTED as to these defendants and that this criminal action is removed from the joint criminal jury trial docket which will commence January 10, 2011. It is further

ORDERED that this criminal action is set for trial on the joint criminal jury trial docket which will commence May 23, 2011. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h), the time between the date of this Order and May 23, 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