

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BARBARA PORTER,

Defendant.

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CRIMINAL ACTION

No. 10-20085-01-KHV

MEMORANDUM AND ORDER

On June 17, 2010, defendant was charged with one count of aiding and abetting in the transportation of a minor with the intent that the minor engage in illegal activity in violation of 18 U.S.C. § 2423(a) and 18 U.S.C. § 2, one count of persuading a person to hinder or delay or prevent communication to a law enforcement officer relating to the production of child pornography in violation of 18 U.S.C. § 1512(b)(3), and one count of harboring a fugitive in violation of 21 U.S.C. § 1071. On June 18, 2010, defendant appeared for arraignment and entered pleas of not guilty. She is currently on pretrial release bond.

This matter is before the Court on Defendant's Amended Motion For Extension Of Time To File Pretrial Motions And Motion For Continuance Of Jury Trial Setting (Doc. #15) filed July 6, 2010. Defendant seeks an extension of time from July 20, 2010 to September 15, 2010 to file pretrial motions. Defendant also seeks an unspecified continuance of the trial now set for August 16, 2010. Counsel has discussed this motion with defendant and she does not object. Further, the government does not oppose the request.

Defendant seeks the continuance under 18 U.S.C. § 3161(h)(7)(B) (i), (ii) and (iv). The Court finds that the ends of justice served by granting this continuance outweigh the interests of the

public and defendant in a speedy trial. Based on the circumstances as set forth in defendant's detailed motion, the Court finds that the requested continuance of the trial setting is necessary (1) in order to avoid a miscarriage of justice, see 18 U.S.C. § 3161(h)(7)(B)(i); (2) because of the unusual nature of the matter, see 18 U.S.C. § 3161(h)(7)(B)(ii); and (3) to allow counsel for defendant the reasonable time necessary to effectively prepare the case, see 18 U.S.C. § 3161(h)(7)(B)(iv).

Specifically, the Court finds that the following points justify the continuance:

1. The unusual nature of the case makes it unreasonable to expect adequate preparation for pretrial proceedings within the time limits established by the Speedy Trial Act. The indictment alleges that defendant aided and abetted her husband's alleged serious criminal misconduct toward defendant's minor children.
2. The government has not yet provided defendant with discovery. The allegations leading to the federal indictment arose from five child-in-need-of-care petitions filed in Johnson County District Court more than two months ago. State agencies have been actively investigating allegations of physical and sexual abuse of five minor children. These agencies are currently preparing written reports and evidence for review by the United States Attorney in this matter. The government has indicated that some important discovery material, including statements by the minor children, will not be available to defendant until the end of this month. Discovery will also include multiple video recordings and substantial electronic material. Competent representation requires that defense counsel have a reasonable period of time to review the discovery and independently investigate the case.
3. After being charged in this case, defendant encountered significant emotional issues and is currently seeing a therapist twice weekly. Counsel needs time to determine whether to request a mental evaluation of defendant to ascertain if any mental issues present a defense and/or whether defendant is capable of assisting in her own defense.
4. Defense counsel has long-standing plans for a service trip to Ethiopia which requires counsel to be out of the country from August 2, 2010 to August 15, 2010. Defense counsel has developed a trusting attorney-client relationship with defendant and she requests that he remain her counsel in this matter. New counsel would unreasonably deny defendant continuity of counsel.

The Court finds that defendant's interest in preparing a full and adequate defense, including an extension of time to allow defense counsel to obtain discovery and formulate a defense,

outweighs the interests of the public and defendant in a speedy trial.

IT IS THEREFORE ORDERED that Defendant's Amended Motion For Extension Of Time To File Pretrial Motions And Motion For Continuance Of Jury Trial Setting (Doc. #15) filed July 6, 2010 be and hereby is **SUSTAINED**.

Trial is set for November 1, 2010 at 9:30 a.m. The deadline for filing pretrial motions is set for September 15, 2010. The response deadline is set for September 24, 2010. The Court will hold a hearing on pretrial motions at 1:30 p.m. on September 28, 2010.

IT IS FURTHER ORDERED that the delay caused by this continuance – from July 6, 2010 to September 15, 2010 – shall be excludable pursuant to 18 U.S.C. § 3161(h)(7).

Dated this 9th day of July, 2010 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge