

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

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 10-40078-01-RDR

ALLEN S. BENSON
Defendant.

**ORDER TO EXTEND RESPONSE DEADLINE
AND CONTINUE MOTION HEARING**

The matter comes before the court on the motion of the government (Doc. 27) to extend the response deadline in this case from December 20, 2010 to and including January 31, 2011, and to continue the Motions Hearing from January 5, 2011 to a date to be determined by the Court.

In support of its motion, the government states that:

1. Responses are currently due December 20, 2010.
2. The Motions Hearing is presently set for January 5, 2011, at 10:00 a.m.
3. One prior extension of the deadline for filing motions was sought by and granted to the defendant. Two prior extensions have been sought by and granted to the government.
4. On November 3, 2010, the defendant filed a motion to suppress evidence (Doc. 14), with memorandum in support (Doc. 15); a motion for discovery (Doc. 16); and a motion for *Daubert* Hearing and to exclude DNA evidence (Doc. 17),

with memorandum in support (Doc. 18).

5. On November 10, 2010, the government filed an unopposed motion (Doc. 20) seeking additional time to respond to the defendant's motions due to the complexity of the issues raised and the need to conduct additional investigation and research. The government also indicated in its filing that the parties were negotiating in an attempt to resolve the issues raised by the defendant's motion for discovery. The Court granted the government's motion on November 15, 2010, (Doc. 21), setting the response deadline on December 13, 2010, and the motion hearing on December 22, 201, at 10:00 a.m.

6. On December 8, 2010, the Court entered an agreed order submitted by the parties resolving the issues raised by the defendant's discovery motion and finding it moot (Doc. 23).

7. The current schedule was established in the Court's Order to Extend Response Deadline and Continue Motion Hearing (Doc. 25), which granted a motion filed by the government (Doc. 24) seeking a one week extension due to government's counsel being stranded out of town and unable to travel due to inclement weather and the need for the defendant to have additional time to consider an offer regarding resolution of the case made by the government.

8. Counsel for the defendant reports that he has not yet been able to obtain

an answer from his client regarding the government's offer; however, the defendant is still considering the offer.

9. The government is in the process of gathering the information addressed by the parties agreed discovery order (Doc. 23) for disclosure to the defendant and anticipates being able to provide this discovery to the defendant in the next one to two weeks. Both parties anticipate that additional time will be needed once the discovery is provided for the government to prepare its response to the defendant's outstanding motions and for the parties to prepare for the hearing on the motions.

10. The government, therefore, requests that the response deadline be extended until and including January 31, 2011, and the Motions Hearing be continued to a date thereafter to be determined by the Court.

11. Counsel for the defendant was contacted with respect to the instant motion and has no objection to it being granted.

The government requests that the response deadline be extended until and including January 31, 2011, and that the motion hearing be continued until a date after January 31, 2010, when the Court may conveniently hear the defendant's motions.

The Court finds that the request is a reasonable one and should be granted.

The Court further finds and orders for the reasons set forth in the

government's motion that the period of trial delay resulting from the continuance is excludable time, as provided in 18 U.S.C. § 3161(h)(1)(D), in that it is "delay resulting from. . .[a] pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion," and 18 U.S.C. § 3161(h)(7)(A), in that the ends of justice served by the granting of such continuance outweigh the best interest of the public and the defendant in a speedy trial.

IT IS THEREFORE ORDERED that the government's motion (Doc. 27) is hereby GRANTED, and the response deadline is hereby extended until and including January 31, 2011.

IT IS FURTHER ORDERED that the motion hearing in this matter is hereby continued to February 10, 2011 at 10:00 a.m.

IT IS SO ORDERED.

s/Richard D. Rogers
United States District Judge