

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN B. HOLMES,

Defendant.

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CRIMINAL ACTION

No. 11-20070-01-KHV

MEMORANDUM AND ORDER

On August 11, 2011, a four count indictment charged defendant with drug and firearms violations. Doc. #1. On October 26, 2011, defendant appeared for arraignment. Defendant is currently on pretrial release. This matter is before the Court on defendant's Motion To Continue (Doc. #10) filed November 22, 2011. Defendant seeks a 30-day extension of the pretrial motions deadline, now set for November 22, 2011. Counsel states simply that he needs additional time "to review discovery with his client and determine if there are any issues to be raised prior to trial," and states that government counsel does not object to the motion. Doc. #10 at 1. Counsel asserts that under 18 U.S.C. § 3161(h)(7), a continuance outweighs the best interests of the public and defendant in a speedy trial.

The United States Supreme Court has made clear that district courts must make recorded findings justifying an ends-of-justice exclusion under Section 3161(h)(7). Bloate v. United States, 130 S.Ct. 1345, 1357-58 (Mar. 8, 2010) (time to prepare pretrial motions excludable only upon an ends of justice continuance); see United States v. Stimatze, No. 10-40027-01-SAC, 2010 WL 864477, at *1 (D. Kan. Mar. 10, 2010) (requirement ensures that district court considers relevant factors and provides appellate court with adequate record to review). The Court must make a record

of its reasons for finding that “the ends of justice served by granting of such a continuance outweigh the best interests of the public and the defendant in a speedy trial.” Bloate, 130 S.Ct. 1345 at 1358 (citing 18 U.S.C. § 3161(h)(7)(A)). The record must not only identify the circumstances or events offered for the continuance but it must explain how they have created the need for additional time. See United States v. Toombs, 574 F.3d 1262, 1269, 1273 (10th Cir. 2009) (“conclusory statements” are inadequate; court must inquire into nature, extent and quantity of evidence and amount of time needed). This Court has addressed the kinds of information counsel should provide when seeking a continuance based on the ends of justice. See Stimatze, 2010 WL 864477, at *3-4 (providing examples of types of specific and detailed reasons and information required to sustain court findings for such continuances). Defendant’s motion does not provide the information required for the Court to make an ends-of-justice finding at this time.

IT IS THEREFORE ORDERED that defendant’s Motion To Continue (Doc. #10) filed November 22, 2011 be and hereby is **OVERRULED**.

Dated this 28th day of November, 2011 at Kansas City, Kansas.

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