

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 11-40057-01/03-RDR

MARCOS FIDEL MOJICA-CRUZ
and JUAN ANGEL CRUZ,

Defendants.

O R D E R

This matter is presently before the court upon the motions of defendants Mojica-Cruz and Cruz for an extension of time to file pretrial motions. The defendants seek additional time to engage in negotiations with the government so that this case can be resolved prior to trial. The defendants note that the government does not object to these motions. The defendants seek an extension of at least thirty days to file their pretrial motions. This is the defendants' second request for a continuance in this case.

The defendants and one other co-defendant are charged in a two-count indictment with (1) conspiracy to possess with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. § 846 and (2) distribution of 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. § 841(a)(1). The defendants are in custody pending trial.

Under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7), the court may exclude a period of delay from the time computed under the Act's deadlines for starting a trial if the court finds that the ends of justice served by granting the continuance outweigh the best interest of the public and the defendant in a speedy trial. To make this determination, the court must consider the following factors "among others:" 1) whether the failure to grant the continuance would likely make the continuation of the proceeding impossible or result in a miscarriage of justice; 2) whether the case is unusual, complex or contains novel issues which require additional time for preparation; 3) whether there was a delay in filing the indictment which justifies a continuance; and 4) whether the failure to grant a continuance would deny the defendant reasonable time to obtain counsel, or deny either side continuity of counsel or deny the attorney for the government or defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

After full consideration, the court finds that the denial of the requested extension may deny counsel and defendant the time necessary to adequately prepare and negotiate for a resolution of this matter, taking into account the exercise of due diligence. The court believes that the requested continuance is in the interests of the public and the parties because it will facilitate a fair, just and efficient resolution of this matter.

In sum, the court finds that the continuance requested is in the interests of justice which outweigh the interests of the public and the defendants in a speedy trial. Therefore, the continuance requested constitutes excludable time under 18 U.S.C. § 3161(h)(7).

Defendants' motions shall be granted and they shall be allowed until December 17, 2011 in which to file pretrial motions. The government shall be allowed until December 27, 2011 to file its responses. The hearing on all pretrial motions filed in this case shall be held on January 10, 2012 at 9:30 a.m.

IT IS THEREFORE ORDERED that defendant Mojica-Cruz' motion for extension of time to file pretrial motions (Doc. # 67) be hereby granted. He shall be allowed until December 17 to file any motions, and the government shall be allowed until December 27, 2011 to file its responses. The hearing on all pretrial motions filed in this case shall be held on January 10, 2012 at 9:30 a.m.

IT IS FURTHER ORDERED that defendant Cruz' motion for extension of time to file pretrial motions (Doc. # 68) be hereby granted. He shall be allowed until December 17 to file any motions, and the government shall be allowed until December 27, 2011 to file its responses. The hearing on all pretrial motions filed in this case shall be held on January 10, 2012 at 9:30 a.m.

IT IS SO ORDERED.

Dated this 22nd day of November, 2011 at Topeka, Kansas.

s/Richard D. Rogers

United States District Judge