

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:22-cr-0008
	)	
YEFRI MARTINEZ HERRERA and KELLY BRUNEY,	)	
	)	
	)	
Defendants.	)	
	)	

ORDER

BEFORE THE COURT are Defendant Yefri Martinez-Herrera’s (“Herrera”) Unopposed Motion to Continue Evidentiary Hearing Date, ECF No. 81, and Supplemental Motion to Continue Evidentiary Hearing Date and Motion to Continue Trial Date (ECF No. 83.) For the reasons stated below the Court will grant the motions. The time to try this case is extended up to and including April 11, 2023.

Defendant Herrera filed a motion to suppress on April 11, 2022. (ECF No. 42.) Thereafter, the Court scheduled an evidentiary hearing on the motion to suppress for November 4, 2022. (ECF No. 79.) On November 1, 2022, Defendant Herrera moved to reschedule the hearing on the motion to a date after November 28, 2022. (ECF No. 81.) In his motion, Defendant Herrera avers that his counsel has not had the opportunity to prepare for the upcoming hearing due to scheduling conflicts. *Id.* at 1. This case is currently scheduled for jury selection and trial for November 14, 2022.

On November 2, 2022, the Court entered an order construing the motion as an implicit request to continue the jury selection and trial in this matter and requiring Defendant Herrera to file an appropriate motion—with the required analysis—in accordance with LRCr 12.5 and LRCi 7.1(g). (ECF No. 82.) Defendant Herrera filed his supplemental motion the same day. (ECF No. 83.) In this motion, Defendant Herrera supplemented his request that this Court continue the evidentiary hearing and moved to continue the jury selection and trial in this matter. *Id.* at 1. Defendant Herrera avers that that delay resulting from the filing of the motion to suppress is excluded time under the Speedy

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Trial Act. *Id.* at 1-2. Defendant Herrera consulted with counsel for co-Defendant Kelley Bruney and opposing counsel, neither of whom oppose the motion or object to the exclusion of time under the Speedy Trial Act. *Id.* at 2. Defendant Bruney, however, continues to assert his constitutional right to a speedy trial. *Id.* at 2.

Under the Speedy Trial Act, courts may exclude “any delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or prompt disposition of, such motion.” 18 U.S.C. §3161(h)(1)(D). Furthermore, United States Court of Appeals for the Third Circuit has recognized that “whether or not a case is ‘unusual’ or ‘complex,’ an ‘ends of justice’ continuance may in appropriate circumstances be granted.” *United States v. Fields*, 39 F.3d 439, 444 (3d Cir. 1994). *See United States v. Stallings*, 701 F. App’x 164, 170-71 (3d Cir. 2017) (upholding an ends of justice continuance based in part on counsel’s family emergency and scheduling conflicts); *United States v. Moore*, 216 F. Supp. 3d 566, 581 (E.D. Pa. 2016) (finding that the Speedy Trial Act was not violated where the court granted a continuance based on defense counsel’s scheduling conflicts).

While the Speedy Trial Act requires that defendants be tried within seventy days of indictment, the Court specifically finds that the ends of justice served by extending this period outweigh the best interest of the public and the defendants. Here, an extension of time is necessary for the defense counsel to adequately prepare for the suppression hearing, and for the Court to properly dispose of the motion to suppress.

The premises considered, it is hereby

ORDERED that Defendant Herrera’s Unopposed Motion to Continue Evidentiary Hearing Date, ECF No. 81, and Supplemental Motion to Continue Evidentiary Hearing Date and Motion to Continue Trial Date, ECF No. 83, are **GRANTED**; it is further

ORDERED that the evidentiary hearing previously scheduled for November 4, 2022, is hereby **CONTINUED** to commence promptly at 9:00 A.M. on February 3, 2023, in St. Thomas Courtroom 1; it is further

ORDERED that the time beginning from the date of this order granting an extension for trial through April 11, 2023, **SHALL** be excluded in computing the time within which the trial in this matter must be initiated pursuant to 18 U.S.C. § 3161; it is further

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ORDERED that the parties **SHALL** file and serve a pre-trial brief no later than March 31, 2023, which shall include the following: (a) proposed list of witnesses; (b) proposed list of exhibits; (c) estimated length of case-in-chief and case-in-defense; (d) proposed non-standard *voir dire* questions; and (e) proposed non-standard jury instructions related to the elements of the charges and defenses; it is further

ORDERED that the parties **SHALL** provide the Clerk of Court with a USB Flash Drive containing electronic versions of exhibits no later than April 5, 2023;¹ and it is further

ORDERED that the April 4, 2022 deadline for substantive motions has **EXPIRED**; it is further

ORDERED that any motion in limine **SHALL** be filed no later than March 21, 2023, and any response to such motion **SHALL** be filed by March 28, 2023. No further briefing on motions in limine **SHALL** be permitted unless authorized by the Court; it is further

ORDERED that the Jury Selection and Trial in this matter **SHALL** commence promptly at 9:00 a.m. on April 11, 2023, in St. Thomas Courtroom 1.

Dated: November 3, 2022

/s/Robert A. Molloy
ROBERT A. MOLLOY
Chief Judge

¹ Counsel are advised to consult with Court technical staff to determine the proper format for saving electronic versions of exhibits. The Government's trial exhibits shall be labelled sequentially beginning with Government Exhibit 1. Defense's exhibits shall be labelled sequentially beginning with Defense Exhibit A.