

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED *YH*

JAN 16 2007  
JAN 16 2007  
JUDGE JAMES F. HOLDERMAN  
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA )  
)  
v. )  
)  
MICHAEL E. KELLY )  
)  
)

No. 06 CR 964  
Chief Judge James F. Holderman

**GOVERNMENT'S MOTION FOR AN EXTENSION  
OF TIME TO SEEK THE RETURN OF AN INDICTMENT  
OR TO FILE AN INFORMATION**

The UNITED STATES OF AMERICA, by its attorney, PATRICK FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully moves this Court under 18 U.S.C. § 3161(h)(1)(H) and (8)(A) & (B) for an extension of time in which to seek the return an indictment or file an information in this case from January 20, 2007, until and including March 22, 2007. In support of this motion, the government states as follows:

1. Defendant Michael E. Kelly was arrested in Jacksonville, Florida on December 22, 2006 and charged with engaging in a scheme to defraud in violation of Title 18, United States Code, Section 1341. The criminal complaint, which was filed in this district under case number 06 CR 964, alleged that the defendant's scheme involved fraudulently raising over \$400,000,000 through the offer and sale of so-called universal leases to hundreds (more likely thousands) of investors located throughout the United States. The so-called universal leases were purportedly connected to certain hotels, primarily in the Cancun, Mexico area, and offered as much as an 11% return per year for 25 years and the option to sell back the universal lease for 100% of the purchase price in as little as two years. The time period of the scheme according to the criminal complaint was in or about 1999 to the present.

2. Defendant Michael E. Kelly, a United States citizen and formerly a resident of the South Bend area of Indiana, is now a Mexican citizen and has resided in and operated his companies for the last several years from Cancun, Mexico. His arrest in Florida took place as a result of the FBI receiving a tip on or about December 21, 2006 that the defendant was returning to the United States for a medical procedure. In fact, the defendant entered the United States on a chartered plane on or about December 20, 2006 and had plans to leave on December 23, 2006.

3. On December 27, 2006, the defendant waived his right to a detention hearing and to a preliminary hearing in the Middle District of Florida, but reserved the right to have both in this district. On the same day, the presiding magistrate judge in the Middle District of Florida ordered that the defendant be transported in custody to this district.

4. On or about January 9, 2007, the defendant arrived in this district. His first hearing in this district was on January 12, 2007 before Magistrate Judge Michael Mason. Private counsel filed appearances on his behalf and requested January 22, 2007 as a date for a detention hearing. The Court granted the request.

5. The Speedy Trial Act mandates that an indictment or information must be filed within 30 days of the date of the defendant's arrest. 18 U.S.C. § 3161(b). Accordingly, the deadline for indictment or information for defendant Michael Kelly is currently January 20, 2007, before the below discussed 3161(h)(1)(H) exclusion is considered.

6. The Speedy Trial Act excludes in the computing of time within which an information or an indictment must be filed the period of delay caused by the "transportation of any defendant from another district . . . except that any time consumed in excess of ten days from the date of an order of removal or an order directing such transportation, and the defendant's arrival at the

destination shall be presumed unreasonable.” 18 U.S.C. § 3161(h)(1)(H). The defendant was ordered removed from Jacksonville, Florida on December 27, 2006 and arrived in Chicago on or about January 9, 2007. This 12-day period is not unreasonable when both the distance and time of year are considered.

7. The Speedy Trial Act also permits the extension of time to return an indictment “upon the request of the attorney for the government if the Court finds that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(8)(A). Among the non-exclusive factors a court may consider are:

a. Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice. 18 U.S.C. § 3161(h)(8)(B)(i);

b. Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex. 18 U.S.C. § 3161(h)(8)(B)(iii); and

c. Whether the failure to grant such a continuance in a case, which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the attorney for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. §3161(h)(8)(B)(iv).

8. The government respectfully requests an exclusion of time from computing the time within which an indictment or information must be filed for the following reasons:

a. The arrest of the defendant in another district and the transportation of the defendant in custody from the Middle District of Florida to the Northern District of Illinois;

b. The unexpected nature of the timing of the arrest and the time of year of the arrest, which, among other things, coincided with a holiday recess for the grand juries in this district.

c. The complex nature of the alleged scheme involving over \$400,000,000 and most likely thousands of financial transactions involved in the receipt and use of investors' funds.

d. The location of potential witnesses in various parts of the United States outside this district as well as potential witnesses located in foreign countries such as Mexico and Panama.

e. The location of bank records and other documentary evidence in various parts of the United States outside this district as well as in foreign countries such as Mexico and Panama.

f. The need to have at least some foreign-obtained records translated.

9. Given the above-described concerns, the government submits that it is unreasonable within the meaning of the statute to expect the return and filing of an indictment or information by January 20, 2007. Moreover, the failure to grant a continuance could result in a miscarriage of justice and would deny the attorneys for the government reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

13. This is the government's first request for an extension of time in which to seek the return of an indictment or to file an information.

WHEREFORE, the government requests this Court to exclude time from the period prescribed in 18 U.S.C. § 3161 to allow for the return of an indictment or information in this matter up to and including March 22, 2007.

Respectfully submitted.

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