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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEP 25 2007
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WAYNE R. ANDERSEN
U. S. DISTRICT COURT JUDGE

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

No. 06 CR 964
Acting Chief Judge Wayne Andersen

**AGREED MOTION FOR A FIFTH EXTENSION
OF TIME TO SEEK THE RETURN OF AN INDICTMENT
OR TO FILE AN INFORMATION**

The UNITED STATES OF AMERICA, by PATRICK FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully moves this Court under 18 U.S.C. § 3161(h)(8)(A) and (B) for a fifth extension of time in which to seek the return of an indictment or file an information in this case from September 28, 2007 to and including November 9, 2007. The first extension of time was sought by the government, which was granted by Chief Judge James Holderman on January 16, 2007. (Copy attached). On March 20, 2007, a second extension of time was sought on an agreed motion, which was granted by Acting Chief Judge Norgle. (Copy attached). On May 8, 2007, a third extension was sought on an agreed motion and Acting Chief Judge Lefkow granted the motion on May 8, 2007 extending the time to bring an indictment or information to July 19, 2007. (Copy attached). On July 10, 2007, based on another agreed motion for an extension, Chief Judge James Holderman granted an extension through September 28, 2007. (Copy attached.)

The current agreed request for an extension of time is sought: to allow the defendant to provide information to the government through additional proffers; to allow the defendant to produce documentary evidence to the government, much of which is located outside the United States; to continue to explore the possibility of a mutually acceptable plea agreement, as a part of which it is

anticipated that the defendant would plead guilty and make substantial restitution of the losses to victims. In support of this agreed 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 "universal leases" involved timeshares in certain hotels, primarily in the Cancun, Mexico area, and the defendant, acting through trained agents, offered prospective leaseholders an 11% return per year for 25 years, as well as 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 former resident of the South Bend, Indiana area, is now a Mexican citizen and a Belize citizen, and has resided in and operated his companies for at least 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.

5. On January 16, 2007, the government moved for additional time in which to seek an indictment. United States District Court Chief Judge James F. Holderman granted the extension through March 22, 2007. In doing so, the Court made a finding that it did "not believe a further extension of time beyond March 22, 2007, will be necessary for the government's effective preparation for an indictment, taking into account the exercise of due diligence."

6. On January 26, 2007, the defendant through counsel waived his right to a preliminary examination and United States Magistrate Michael Mason entered a finding of probable cause.

7. On February 20, 2007, after a detention hearing, United States Magistrate Judge Michael Mason ordered the defendant be detained as a serious risk of flight.

8. 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).

9. The Speedy Trial Act also permits the extension of time to return an indictment "upon the request of the defendant, his attorney or 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 defendant or 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).

10. This matter is exceptionally complex; the criminal complaint alleges an extensive scheme to defraud that generated more than \$400,000,000 obtained from thousands of investors. Documents, witnesses, and other evidence are located both within the United States and in foreign countries such as Mexico and Panama. (In fact, long requested financial documents obtained with the assistance of Panamanian authorities have been received today and time will be needed to analyze them.)

11. In March 2007, Jeffrey Steinback and Edward Genson, appeared as counsel for defendant Michael E. Kelly. Mr. Steinback requested an extension of time to become fully informed about this complex matter and to have sufficient time to counsel the defendant concerning, among other things, potentially providing documentary and other information relevant to the ongoing investigation and exploring potential dispositions. The location of potentially relevant information outside the United States makes a further extension of time necessary, even with the exercise of due diligence.

12. Since March 2007, counsel for defendant Kelly has traveled to Mexico on several

occasions and met with Kelly's business associates and lawyers for the purpose of familiarizing himself with the complex and multi-national nature of the case, especially the current financial status of defendant Kelly and his businesses. This includes consultation with a number of attorneys from Mexico to assist in providing details concerning a significant asset which may be utilized to provide restitution. Thereafter, counsel for Kelly arranged for two formal presentations to the government, the second including a wide array of documents. Counsel for defendant Kelly is presently collecting additional material to be produced to the government from Mexico concerning the possibility of restitution and the sources and uses of victims' funds.

13. Defendant Kelly has been providing information to the government about his conduct pursuant to proffers. There have been multiple proffer sessions, the last of which was yesterday. Additional time is needed to complete this process as it involves many complex and other transactions over a period of years. The next session is scheduled for Friday, September 28th. The defendant through counsel has also expressed his intention to resolve this matter through a plea agreement. Additional time is needed to explore possible terms, including the payment of restitution, which potentially involves money and assets located outside the United States. The defendant's and the government's efforts to resolve this matter since the last extension have been hampered at times by the unavailability of the defendant or defendant's counsel due to illnesses.

14. Defendant Kelly and the government agree that under these circumstances an extension of time within which an indictment or information must be filed to and including November 9, 2007 is in the interests of justice and in the best interests of the public. Granting an extension should allow the defendant sufficient time to provide information relevant to the ultimate proper charging of this matter and may lead to a resolution of any charges against this defendant

without any trial.

15. Nothing in the government's agreement to this request for an extension should be viewed as limiting the government in any way from seeking an indictment or filing an information earlier than November 9, 2007.

WHEREFORE, the government and the defendant agree to this request to exclude time and respectfully 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 November 9, 2007.

Respectfully submitted,
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Agreed to: J. Steinback
JEFFREY B. STEINBACK
Attorney for Defendant Michael E. Kelly

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 06 CR 964
)	Chief Judge James F. Holderman
MICHAEL E. KELLY)	
)	

ORDER

Upon the government's application under Title 18, United States Code, Section 3161(h)(1)(H) and (h)(8)(A), for an exclusion of time in computing the time within which an information or indictment must be filed and an extension of time to seek the return of an indictment or file an information in the above-captioned cause,

IT IS HEREBY ORDERED that time is excluded from computing the time within which to file an indictment or information against the named defendant and the time to file an indictment or information is extended to and including March 22, 2007. The Court finds that the ends of justice served by the extension to March 22, 2007, outweigh the best interests of the public and the defendant in a speedy trial for the following reasons:

1. The failure to grant such an extension would result in a miscarriage of justice;
2. It would be unreasonable, in the absence of an extension, to expect return and filing of an indictment in the time period specified in Section 3161(b) because of the time that the arrest occurred and because the facts upon which the grand jury must base its determination are complex concerning the nature of the prosecution;

3. The failure to grant such an extension to March 22, 2007, would deny the attorneys for the government reasonable time necessary for effective preparation, taking into account the exercise of due diligence; and

4. The court does not believe a further extension of time beyond March 22, 2007, will be necessary for the government's effective preparation of an indictment, taking into account the exercise of due diligence.

ENTERED:



JAMES F. HOLDERMAN
Chief Judge
Northern District of Illinois

DATED: January 16, 2007

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 06 CR 964
)	Acting Chief Judge Charles R. Norgle, Sr.
)	
MICHAEL F. KELLY)	
)	

ORDER

Upon the government's application, at the defendant's request and with the defendant's agreement, under Title 18, United States Code, Section 3161(h)(8)(A), for a second exclusion of time in computing the time within which an information or indictment must be filed and an extension of time to seek the return an indictment or file an information in the above-captioned cause,

IT IS HEREBY ORDERED that time is excluded from computing the time within which to file an indictment or information against the named defendant and the time to file an indictment or information is extended to and including May 16, 2007. The Court finds that the ends of justice served by the extension to May 16, 2007, outweigh the best interests of the public and the defendant in a speedy trial for the following reasons:

1. The failure to grant such an extension would result in a miscarriage of justice;
2. It would be unreasonable, in the absence of an extension, to expect return and filing of an indictment in the time period specified in Section 3161(b) because of the time that the arrest occurred and because the facts upon which the grand jury must base its determination are complex concerning the nature of the prosecution; and

3. The failure to grant such an extension to May 16, 2007, would deny the attorneys for the defendant reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

ENTERED:



CHARLES R. NORGLER, SR.
Acting Chief Judge
Northern District of Illinois

DATED: March 20, 2007

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	No. 06 CR 964
)	Acting Chief Judge Joan Humphrey Lefkow
)	
MICHAEL E. KELLY)	
)	

ORDER


Upon the government's application with the defendant's agreement, under Title 18, United States Code, Section 3161(h)(8)(A), for a third exclusion of time in computing the time within which an information or indictment must be filed and an extension of time to seek the return an indictment or file an information in the above-captioned cause,

IT IS HEREBY ORDERED that time is excluded from computing the time within which to file an indictment or information against the named defendant and the time to file an indictment or information is extended to and including July 19, 2007. The Court finds that the ends of justice served by the extension to July 19, 2007, outweigh the best interests of the public and the defendant in a speedy trial for the following reasons:

1. The failure to grant such an extension would result in a miscarriage of justice;
2. It would be unreasonable, in the absence of an extension, to expect return and filing of an indictment in the time period specified in Section 3161(b) because of the time that the arrest occurred and because the facts upon which the grand jury must base its determination are complex concerning the nature of the prosecution; and
3. The failure to grant such an extension to July 19, 2007, would deny the attorneys for

the defendant and for the government reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

ENTERED:



JOAN HUMPHREY LEFKOW
Acting Chief Judge
Northern District of Illinois

DATED: May 8, 2007

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)

v.)

MICHAEL E. KELLY)

No. 06 CR 964

Chief Judge James F. Holderman

ORDER

Upon the government's application, at the defendant's request and with the defendant's agreement, under Title 18, United States Code, Section 3161(h)(8)(A), for a fourth exclusion of time in computing the time within which an information or indictment must be filed and an extension of time to seek the return an indictment or file an information in the above-captioned cause,

IT IS HEREBY ORDERED that time is excluded from computing the time within which to file an indictment or information against the named defendant and the time to file an indictment or information is extended to and including September 28, 2007. The Court finds that the ends of justice served by the extension to September 28, 2007, outweigh the best interests of the public and the defendant in a speedy trial for the following reasons:

1. The failure to grant such an extension would result in a miscarriage of justice;
2. It would be unreasonable, in the absence of an extension, to expect return and filing of an indictment in the time period specified in Section 3161(b) because of the time that the arrest occurred and because the facts upon which the grand jury must base its determination are complex concerning the nature of the prosecution; and

3. The failure to grant such an extension to September 28, 2007 would deny the attorneys for the defendant reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

ENTERED:



JAMES F. HOLDERMAN
Chief Judge Northern District of Illinois

DATED: July 9, 2007