

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)	
)	

**AMENDED AGREED MOTION FOR AN ADDITIONAL 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, at the defendant’s request and with the defendant’s agreement, respectfully moves this Court under 18 U.S.C. § 3161(h)(8)(A) and (B) for a seventh extension of time in which to seek the return of an indictment or file an information in this case from January 11, 2008 to and including February 8, 2008. The first extension of time was sought by the government, which was granted by Chief Judge James Holderman on January 16, 2007. On March 20, 2007, a second extension of time was sought on an agreed motion, which was granted by Acting Chief Judge Norgle. 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. On July 10, 2007, based on another agreed motion for an extension, Chief Judge James Holderman granted an extension through September 28, 2007. On September 25, 2007, Acting Chief Judge Wayne R. Andersen granted an agreed motion extending to time to bring charges through November 9, 2007. On November 7, 2007, Chief Judge James Holderman, based on a motion requested by the defendant and agreed to by the parties, issued an order extending the time to bring charges through January 11, 2008.

The current agreed request for an extension of time is sought at the request of the defendant through counsel. The defendant is seeking this extension for the following reasons: (1) the defendant through counsel has requested an additional opportunity to make a proffer of information to the government relating to the matter under investigation; (2) the defendant through counsel has submitted a draft proposed restitution plan, including the identification of assets to be liquidated for the benefit of victims, which draft proposal is currently under review by the government; (3) the defendant through counsel has been providing to the government supporting documentation for the draft proposed restitution plan, much of which is in Spanish; (4) the defendant seeks additional time to refine his draft proposal and to produce to the government additional information from Mexico and Panama in support of the draft proposal; and, (5) the defendant through counsel also seeks additional time to negotiate the terms of a plea agreement, in addition to the restitution provision mentioned above. The defendant contemplates pleading guilty as a part of any plea agreement.

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 (the evidence now shows thousands) of investors located throughout the United States. The defendant and others including a network of hundreds of salesmen sold the universal leases by offering returns of as much as 11% 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. The criminal investigation has expanded to cover the offer and sale of investments in the form of promissory notes by the defendant and others in 1998 and 1999.

2. Defendant Michael E. Kelly, a United States citizen and former resident of the South Bend, Indiana area, is now also a Mexican citizen and a Belize citizen, and, until his arrest, had 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. The defendant remains detained today pursuant to that order.

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 has been and remains 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.

11. In March 2007, Jeffrey Steinback and Edward Genson appeared as counsel for defendant Michael E. Kelly.

12. Since March 2007, counsel for defendant Kelly has traveled to Mexico on several occasions 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 attorneys from Mexico to assist in providing details concerning assets which may be utilized to provide restitution. Counsel for defendant Kelly continues to collect additional material from Mexico for production to the government. Most recently, this has included information identifying potential victims and their losses and the identification of assets to pay restitution.

13. Defendant Kelly has been providing information to the government about his conduct pursuant to proffers. There have been multiple proffer sessions. The defendant through counsel has asked for the opportunity to make at least one more proffer of information before a final charging decision is made.

14. 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 repatriation of assets for restitution purposes is complicated by not only the foreign location of assets, but also by the ongoing business nature of some of the assets. Of course, it is the intention of the parties that any resulting order for restitution will be designed to benefit the

thousands of victims.

15. Defendant Kelly and the government intend to continue to exercise due diligence in attempting to resolve this matter. Both agree, that under the circumstances described above, an extension of time within which an indictment or information must be filed to and including February 8, 2008 is in the interests of justice and in the best interests of the public. Granting an extension should allow the defendant time to provide additional information relevant to the ultimate proper charging of this matter and to a resolution of any charges against this defendant without any trial. It should also allow the government time to review the recently produced information concerning the defendant's draft restitution proposal.

16. 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 February 8, 2008.

17. Neither party anticipates seeking a further extension of time beyond February 8, 2008.

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 February 8, 2008.

Respectfully submitted.

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