

M E M O R A N D U M

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on the Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing, which motion was filed April 6, 2005,¹ and Defendant Angel Ferrer's Motion for Enlargement of Time for Filing Pre-Trial Motions, which motion was filed March 23, 2005.² Upon consideration of the responses of the individual defendants,³ after oral argument conducted before the undersigned May 11, 2005, and for the reasons expressed below, we grant the Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing.

¹ The Government's Memorandum in Support of its Motion for Speedy Trial Act Continuance was filed May 3, 2005.

² Defendant Ferrer's motion for enlargement of time to file pre-trial motions was certified as unopposed by the government.

³ The Reply of Jason Lopez to Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing was filed April 28, 2005. The Amended Reply of Jason Lopez to Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing was filed April 28, 2005. Defendant's Response to Government's Motion Pursuant to 18 U.S.C. § 3161(c)(1) on behalf of defendant Argenis Pacheco Moscoso was filed April 27, 2005. Defendant's Waiver of Rights Pursuant to 18 U.S.C. § 3161(c)(1) was filed on behalf of defendant Joshua Baez on April 27, 2005. Defendant, David Bosah's Waiver of Rights Pursuant to 18 U.S.C. § 3161(c)(1) filed April 27, 2005. A letter response dated April 26, 2005 from William R. McElroy, Esquire, counsel for defendant Angel Ferrer sent to the court. Defendant's Waiver of Rights Pursuant to 18 U.S.C. Section 3161(C)(1) on behalf of defendant Christian Delgado was presented in open court May 11, 2005 and filed May 12, 2005.

Specifically, we conclude that pursuant to the provisions of the Speedy Trial Act⁴ this is a complex matter. In addition, we conclude that failure to grant the requested continuance will deny counsel for the government and all defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. Furthermore, we conclude that the ends of justice are served by the granting of the government's motion and outweigh the best interests of the public and the defendants in a speedy trial.

By separate Order entered contemporaneously with the within Memorandum we have established numerous deadlines including a deadline for the government to produce all discovery in this matter, a deadline for defendants to file pre-trial motions, an initial hearing date on any pre-trial motions, deadlines for submission of jury voir dire questions and proposed points for charge and a trial attachment date.

PROCEDURAL HISTORY

On March 15, 2005 a thirteen-count Indictment was filed in this court naming as defendants Argenis Pacheco Moscoso,⁵

⁴ 18 U.S.C. §§ 3161-3174.

⁵ Defendant Moscoso is charged in Counts One, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen of the Indictment.

Angel Ferrer,⁶ Jason Lopez,⁷ Christian Delgado,⁸ David Nduka Bosah⁹ and Joshua Baez.¹⁰

The Indictment in this matter was the result of a nine-month investigation, which charges the six defendants with the following crimes: conspiracy to distribute in excess of 50 grams of cocaine base ("crack"), in violation of 21 U.S.C. § 846; possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1); distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1); possession of cocaine base with intent to distribute within 1000 feet of a school, in violation of 21 U.S.C. § 860(a); distribution of cocaine base within 1000 feet of a school in violation of 21 U.S.C. § 860(a); felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); aiding and abetting, in violation of 18 U.S.C. § 2; and forfeiture based upon 21 U.S.C. § 853(a)(1).

On March 15, 2005, United States Magistrate Judge Peter B. Scuderi entered an Order granting the government's motion to seal the Indictment. In addition, Judge Scuderi issued bench warrants for each of the six defendants. By letter

⁶ Defendant Ferrer is charged in all 13 counts of the indictment.

⁷ Defendant Lopez is charged in only Count One of the Indictment.

⁸ Defendant Delgado is charged in only Count One of the Indictment.

⁹ Defendant Bosah is charged in only Count One of the Indictment.

¹⁰ Defendant Baez is charged in Counts One and Three of the Indictment.

directed to the Clerk of Court dated March 17, 2005, Special Assistant United States Attorney M. Theresa Johnson requested that the Indictment in this matter be unsealed.

On March 17, 2005 defendants Angel Ferrer and Jason Lopez initially appeared in this matter before United States Magistrate Judge Arnold C. Rapoport. On March 18, 2005 defendant David Bosah initially appeared before Judge Rapoport. On March 23, 2005 defendant Argenis Pacheco Moscoso initially appeared before Judge Rapoport. On April 12, 2005 defendant Christian Delgado initially appeared before Judge Rapoport. Finally, on April 19, 2005 defendant Joshua Baez initially appeared before Magistrate Judge Rapoport.¹¹

CONTENTIONS OF THE PARTIES

Government's Contentions

The government contends that the Indictment in this matter was the result of a nine-month investigation. Specifically, Count One of the Indictment alleges a conspiracy to distribute in excess of 50 grams of cocaine base in violation of 21 U.S.C. § 846, which conspiracy was allegedly perpetrated for more than one year from about March 2003 to about August 2004

¹¹ At the May 11, 2005 argument on this matter, Marc S. Fisher, Esquire, counsel for defendant Baez explained that the reason Mr. Baez was not arraigned earlier was because Mr. Baez was incarcerated at SCI-Fayette and was outside the jurisdiction of this court. By Order of Judge Rapoport dated March 23, 2005 the United States Marshal and the Warden of SCI-Fayette were directed to produce Mr. Baez for arraignment on April 19, 2005.

involving the sale of approximately \$3,000,000 in crack cocaine.

The government further contends that discovery in this matter is voluminous, including numerous documents, search warrants, arrest warrants, FBI 302 memoranda, physical evidence, photographs, confessions, videotapes and numerous other items. Furthermore, because of the nature and extent of its investigation in this matter, the government asserts that additional time is needed to, among other things, copy and organize discovery for distribution to defendants, and that defendants and their respective counsel will need time to meaningfully review discovery in this matter. Moreover, the government avers that because of the extensive discovery, and depending upon the results of the respective investigations by the individual defendants, additional time is necessary for defense counsel to determine whether to file any motions in this matter, and if so, what motions should be filed.

Finally, by charging all defendants in one Indictment, and considering the charge of conspiracy contained in Count One, the government contends that its intent is to try all defendants at one consolidated trial.

Defendants' Contentions

No defense counsel objects to having this matter declared complex and excluding any time under the Speedy Trial Act. Defense counsel for defendants Lopez, Bosah and Baez

indicated that they are unable to effectively represent their respective clients if forced to trial at this time. The grant of a continuance will enable all defense counsel the opportunity to review discovery with defendants,¹² prepare motions, have the court conduct hearings on any motions and determine whether a non-trial disposition is appropriate or whether defendants wish to proceed to a trial in this matter. In addition, counsel for defendants Moscoso and Ferrer have indicated that they would not be able to go to trial before the end of June 2005.

Some of the individual defendants, as opposed to their counsel, oppose this motion. Specifically, Defendants Argenis Pacheco Moscoso, Angel Ferrer and Jason Lopez have declined to execute a speedy trial waiver.¹³

¹² On May 6, 2005 the government served its discovery letter and the first package of discovery materials on defense counsel. As noted by Marc S. Fisher, Esquire, counsel for defendant Baez, not all of the materials outlined in the government's discovery letter and other materials previously identified (i.e. copies of confessions, videotapes and FBI 302 memoranda) were produced in the discovery materials provided on May 6, 2005. In addition, the government indicated that they have Jencks materials for defendants relating to Grand Jury testimony that they will produce closer to the time of trial.

¹³ After the conclusion of the May 11, 2005 hearing, Robert J. O'Shea, Esquire, counsel for defendant Argenis Pacheco Moscoso contacted the chambers of the undersigned and advised the court that his client has directed Mr. O'Shea to file pre-trial motions. In addition, Mr. O'Shea indicated that William R. McElroy, counsel for defendant Angel Ferrer was given similar instructions by his client.

Defendants David Bosah and Joshua Baez originally signed a speedy trial waiver, but at the hearing in this matter withdrew their speedy trial waivers and indicated that they did not consent to the government's within motion. After consultation with his attorney, defendant Christian Delgado has consented to the within motion and signed a speedy trial waiver.

FINDINGS OF FACT

Based upon the government's motion, the Indictment, the proffer of Assistant United States Attorney Francis C. Barbieri, Jr. at the argument on the government's motion conducted May 11, 2005, and the positions of each of the defendants and their respective counsel, we find the following:

1. The Indictment in this matter was the result of a nine-month investigation, which charges six defendants in 13 counts with the following charges: conspiracy to distribute in excess of 50 grams of cocaine base ("crack"), in violation of 21 U.S.C. § 846; possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1); distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1); possession of cocaine base with intent to distribute within 1000 feet of a school, in violation of 21 U.S.C. § 860(a); distribution of cocaine base within 1000 feet of a school in violation of 21 U.S.C. § 860(a); felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); aiding and abetting, in violation of 18 U.S.C. § 2; and forfeiture based upon 21 U.S.C. § 853(a)(1).
2. Count One of the Indictment alleges a conspiracy to distribute in excess of 50 grams of cocaine base in violation of 21 U.S.C. § 846, which conspiracy was

perpetrated for more than one year from about March 2003 to about August 2004 and involved the sale of approximately \$3,000,000 in crack cocaine.

3. Discovery in this matter consists of 138 documents comprised of a total of 343 pages, including search warrants, arrest warrants, FBI 302 memoranda (which have not yet been produced to defendants), physical evidence, photographs, confessions (none of which have been produced to defendants), videotapes (copies of which have not been produced to defendants) and other information (including Grand Jury testimony).
4. Because of the nature and extent of the government's investigation in this matter, time is needed, among other things, to complete the distribution of all discovery to defendants. This includes copying all confessions, FBI 302 memoranda and surveillance videotapes which have not yet heretofore been produced to defendants.
5. Defendants and their respective counsel will need time to meaningfully review discovery in this matter.
6. In light of the allegations contained in the Indictment, counsel for defendants will need sufficient time to investigate the charges and to formulate any possible defenses to adequately and effectively advise and represent their respective clients. Furthermore, depending upon the results of the respective investigations by defendants, additional time is necessary for defense counsel to determine whether to file any motions in this matter, and if so, what motions should be filed.
7. Defendants are aware that absent a finding by the court that pursuant to 18 U.S.C. § 3161(c)(1) they would have the right to be tried within seventy days of their first appearance in this district, unless this court finds that this is a complex case, or finds that the ends of justice served by taking such action outweigh the best interests of the public and the defendants in a speedy trial.
8. The government has indicated an intent to try all defendants at one consolidated trial because this

case alleges a conspiracy and the evidence against defendants will be in many respects cumulative.

9. As of the date of this Order no defendant has sought or been granted severance.

CONCLUSIONS OF LAW

1. Pursuant to 18 U.S.C. § 3161(h)(8) the ends of justice are best served by granting the within motion, declaring this matter complex, proceeding under the schedule set forth in the accompanying Jury Trial attachment Order, and continuing this matter outweighs the best interests of the public and defendants in a speedy trial.
2. In light of the foregoing Findings of Fact and because of the nature of this case and its complexity, it is unreasonable to expect adequate preparation for pretrial proceedings of the trial itself within the time limits established under the Speedy Trial Act.
3. The grant of a continuance will enable all defense counsel the opportunity to review discovery with defendants, prepare motions, have the court conduct hearings on any motions and determine whether a non-trial disposition is appropriate or whether defendants wish to proceed to a trial in this matter.
4. Pursuant to 18 U.S.C. § 3161(h)(7) the time between the initial appearance of defendants Ferrer and Lopez on March 17, 2005 and defendant Baez on April 19, 2005 is excluded from the seventy-day time period to try defendants Ferrer, Lopez, Moscoso and Bosah.¹⁴

¹⁴ Because defendant Christian Delgado has executed a Speedy Trial Waiver and does not oppose the government's within motion, we conclude that we do not have to explicitly extend his speedy trial deadline pursuant to § 3161(h)(7).

DISCUSSION

Pursuant to the Speedy Trial Act a defendant must be brought to trial within seventy days of the filing and making public of the Indictment or his initial appearance before a judicial officer, whichever is later. 18 U.S.C. § 3161(c)(1). However, the statute provides exceptions to the seventy-day period by virtue of periods of "excludable delay". 18 U.S.C. § 3161(h).

In this case, the government seeks a continuance beyond the seventy-day period pursuant to 18 U.S.C. § 3161(h)(8)(A) and (B). Furthermore, the government seeks a special listing of the trial and exclusion of the time from the Speedy Trial Act based upon the complexity of the case and the anticipated filing of pretrial motions by defendants after receipt of discovery.

The pertinent sections of the Speedy Trial Act provide:

(h) The following periods of delay shall be excluded in computing the time within which an information or indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(8)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant[s] or [their] counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant[s] in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall

be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant[s] in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) 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.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

* * *

(iv) 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...counsel for the defendant[s] or 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)(A) and (B)(ii) and (iv).

In appropriate circumstances, an "ends of justice" continuance is permitted for the purpose of preparing pretrial motions. Furthermore, while an "ends of justice" continuance is

clearly appropriate in a complex case, 18 U.S.C.

§ 3161(h)(8)(B)(ii), it is also appropriate in a case that is not so unusual or complex in order to provide adequate time for the preparation of pretrial motions. 18 U.S.C. § 3161(h)(8)(B)(iv); United States of America v. Fields, 39 F.3d 439, 444 (3d Cir. 1994).

Based upon our Findings of Fact we conclude that this is a complex matter and a continuance of the otherwise applicable speedy trial deadline is appropriate. Specifically, we conclude that the number of defendants, the nature of the charges, the length of the investigation, the types of discovery involved (i.e. numerous arrest and search warrants, surveillance videotapes, confessions and investigative reports) combined with the fact that defendants have not received all of the discovery support a determination that this is a complex matter. Based upon all the foregoing, we conclude that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits of the Speedy Trial Act. 18 U.S.C. § 3161(h)(8)(B)(ii).

Furthermore, even if we are incorrect and this case is not so complex or unusual as we believe, we conclude that defense counsel and defendants need additional time for effective preparation, taking into account the exercise of reasonable diligence by counsel for all parties. 18 U.S.C.

§ 3161(h)(8)(B)(iv). Following are the factors which lead us to conclude that the ends of justice served by granting a continuance outweigh the best interests of the public and the defendants in a speedy trial: the ends of justice will be served by granting defense counsel an appropriate period of time to receive all the discovery in this matter; to review it in a meaningful way with their respective clients; to conduct an independent investigation of the information provided; to file pretrial motions on behalf of defendants; to have the court conduct hearings, if necessary, on any pretrial motions; and to have the undersigned take a reasonable period to reflect on the positions of the parties and issue an appropriate ruling.

Finally, defendant Delgado has consented to a continuance because of his desire for effective representation by his counsel. All the remaining defendants oppose the within motion. However, all defense counsel have indicated that they need additional time to obtain all the discovery in this matter, review it with their respective clients and that they want the opportunity to file pretrial motions if appropriate.

Furthermore, counsel for defendants Lopez, Bosah and Baez specifically assert that they cannot effectively represent the interests of their clients without discovery and the opportunity to file motions. By separate motion, defendant Ferrer seeks an extension of time to file pretrial motions after

receipt of all the discovery. Finally, counsel for defendant Moscoso has indicated that he has been directed to file pretrial motions.

Based upon the foregoing, we conclude that to deny a continuance and force all defense counsel and the sole defendant in agreement with the within motion to trial at this time may result in a miscarriage of justice. 18 U.S.C. § 3161(h)(8)(B)(i). Specifically, we conclude that to conduct a trial at this time may result in a "trial by ambush" because defendants and their counsel have not received all the discovery in this matter and cannot effectively refute the government's case if they do not know of what that case consists prior to trial.

In addition, we note that the time from the filing of pretrial motions through a reasonable period not to exceed 30 days from taking any motion under advisement would be excluded from computing the time within which the trial of this matter must commence. See 18 U.S.C. §§ 3161(h)(1)(F) and (J). In formulating a schedule for this case, we have taken into account the need to provide defense counsel adequate time to receive all discovery; investigate the allegations against their respective clients; file pretrial motions; the need to provide the government adequate time to respond to any motions; the need for the court to schedule an initial hearing on any motions and to

allow reasonable time for the court to rule on motions; the need for both parties to have adequate time to discuss non-trial dispositions after the court has ruled on any pretrial motions; and finally time to prepare for trial.

Next, we note there were 33 days between the initial appearance of defendants Ferrer and Lopez and the initial appearance of defendant Baez because defendant Baez was incarcerated in SCI-Fayette on an unrelated state conviction. We take judicial notice that SCI-Fayette in LaBelle, Fayette County, Pennsylvania in the Western District of Pennsylvania, is outside this judicial district.

The Speedy Trial Act excludes the time within which the trial must commence by virtue of any "delay resulting from any proceeding related to...the removal of any defendant from another district under the Federal Rules of Criminal Procedure."

18 U.S.C. § 3161(h)(1)(G). Moreover, defendant Baez is joined for trial with the other co-defendants, the time for trial has not run against defendant Baez and no motion for severance has been granted. The Speedy Trial Act further excludes "[a] reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and no motion for severance has been granted." 18 U.S.C. § 3161(h)(7).

Accordingly, because we conclude that the 33 days it took to bring defendant Baez before Magistrate Judge Rapoport is not an unreasonable length of time to transfer Mr. Baez from SCI-Fayette to this judicial district, we find that the time between March 17, 2005 and April 19, 2005 should be excluded from the seventy-day time period to try defendants Ferrer, Lopez, Moscoso and Bosah.¹⁵

Finally, on March 23, 2005 defendant Ferrer filed a motion for enlargement of time to file pretrial motions. The "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion" is excluded from the time within which the trial of any offense must commence. 18 U.S.C. § 3161(h)(1)(F).

"[I]n appropriate circumstances an 'ends of justice' continuance under 18 U.S.C. § 3161(h)(8)(A) may be granted to permit the preparation of pretrial motions." Fields, 39 F.3d at 444. The reason given by defendant Ferrer for the enlargement of time to file pretrial motions was that he had not yet received discovery. At this time, none of the defendants have received all of the discovery that the government has identified.

¹⁵ Because defendant Delgado consents to the within motion, it is unnecessary to exclude the time between his initial appearance on April 12, 2005 and the initial appearance of defendant Baez on April 19, 2005. In the event that we are incorrect in that decision, we exclude the seven days between the initial appearance of defendants Delgado and Baez from the speedy trial calculation for defendant Delgado.

Accordingly, because the relief sought by defendant Ferrer is subsumed by the relief granted to all the defendants, and because we conclude that the ends of justice are served by granting such an enlargement of the time to file pretrial motions, we grant defendant Ferrer's request. Furthermore, we conclude that the period of time between the filing of defendant Ferrer's motion and the new date for filing pretrial motions is excludable from the speedy trial calculation.

CONCLUSION

For all the foregoing reasons, the Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing and Defendant Angel Ferrer's Motion for Enlargement of Time for Filing Pre-Trial Motions are each granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	Criminal Action
Plaintiff)	No. 05-CR-00143-all
)	
vs.)	
)	
ARGENIS PACHECO MOSCOSO, a/k/a)	
"Hennessey";)	
ANGEL FERRER, a/k/a "Strange";)	
JASON LOPEZ, a/k/a/ "Jonathon)	
Davila" a/k/a "JB";)	
CHRISTIAN DELGADO, a/k/a "Old)	
Murder" a/k/a "Murder";)	
DAVID BOSAH, a/k/a "DJ"; and)	
JOSHUA BAEZ, a/k/a "Josh")	
Defendants)	

O R D E R

NOW, this 25th day of May, 2005, upon consideration of

the Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing, which motion was filed April 6, 2005; upon consideration of the Government's Memorandum in Support of its Motion for Speedy Trial Act Continuance filed May 3, 2005; upon consideration of Defendant Angel Ferrer's Motion for Enlargement of Time for Filing Pre-Trial Motions, which motion was filed March 23, 2005; upon consideration of the Reply of Jason Lopez to Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing, which reply was filed April 28, 2005; upon consideration of the Amended Reply of Jason Lopez to Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing, which amended reply was filed April 28, 2005; upon consideration of Defendant's Response to Government's Motion Pursuant to 18 U.S.C. § 3161(c)(1), which response was filed on behalf of defendant Argenis Pacheco Moscoso April 27, 2005; upon consideration of Defendant's Waiver of Rights Pursuant to 18 U.S.C. § 3161(C)(1) filed on behalf of defendant Joshua Baez on April 27, 2005; upon consideration of Defendant, David Bosah's Waiver of Rights Pursuant to 18 U.S.C. § 3161(c)(1) filed April 27, 2005; upon consideration of the letter dated April 26, 2005 from William R. McElroy, Esquire, counsel for defendant Angel Ferrer; it appearing that the government seeks an Order declaring this matter a complex case pursuant to 18 U.S.C. 3161(h)(8)(B)(ii); it further appearing

that there is opposition to this motion by some, but not all of the defendants, but no opposition by their respective counsel,¹⁶

IT IS ORDERED that the Government's Motion for Speedy Trial Act Continuance and Motion for Special Listing is granted.

IT IS FURTHER ORDERED that Defendant Angel Ferrer's Motion for Enlargement of Time for Filing Pre-Trial Motions is granted.¹⁷

IT IS FURTHER ORDERED that this matter is declared complex and the court finds as follows:

1. The Indictment in this matter was the result of a nine-month investigation, which charges six defendants in 13 counts with the following charges: conspiracy to distribute in excess of 50 grams of cocaine base ("crack"), in violation of 21 U.S.C. § 846; possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1); distribution of cocaine base, in violation of 21 U.S.C.

¹⁶ In its motion, the government represents that all defense counsel consent to have this matter declared complex and based upon that finding, set an appropriate schedule. After consultation with his attorney, defendant Joshua Baez has consented to the within motion and signed a speedy trial waiver. Defendant David Bosah originally signed a speedy trial waiver, but at the hearing of this matter withdrew his speedy trial waiver. Defendants Argenis Moscoso, Angel Ferrer and Jason Lopez have declined to execute a speedy trial waiver. At this time, there is no indication of what position defendant Christian Delgado takes.

¹⁷ It is the sense of this Order that because we have declared this matter complex and because we have set deadlines among others for production of discovery, filing of motions and a trial date, we have implicitly granted defendant Ferrer's motion for an extension of time to file pre-trial motions.

§ 841(a)(1); possession of cocaine base with intent to distribute within 1000 feet of a school, in violation of 21 U.S.C. § 860(a); distribution of cocaine base within 1000 feet of a school in violation of 21 U.S.C. § 860(a); felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); aiding and abetting, in violation of 18 U.S.C. § 2; and forfeiture based upon 21 U.S.C. § 853(a)(1).

2. Count One of the Indictment alleges a conspiracy to distribute in excess of 50 grams of cocaine base in violation of 21 U.S.C. § 846 which conspiracy was perpetrated for more than one year from about March 2003 to about August 2004 involving the sale of approximately \$3,000,000 in crack cocaine.

3. Discovery in this matter is voluminous, including numerous documents, search warrants, arrest warrants, FBI 302 memoranda, physical evidence, photographs, confessions, videotapes and numerous other items.

4. Because of the nature and extent of the government's investigation in this matter, time is needed , among other things, to copy and organize discovery for distribution to defendants.

5. Defendants and their respective counsel will need time to meaningfully review discovery in this matter.

6. In light of the allegations contained in the Indictment, counsel for defendants will need sufficient time to investigate the charges and to formulate any possible defenses to adequately and effectively advise and represent their respective clients.

7. Because of the extensive discovery and depending upon the results of the respective investigations by defendants, additional time is necessary for defense counsel to determine whether to file any motions in this matter, and if so, what motions should be filed.

8. Defendants are aware that absent a

finding by the court that pursuant to 18 U.S.C. § 3161(c)(1) they would have the right to be tried within seventy days of their first appearance in this district, unless this court finds that this is a complex case, or finds that the ends of justice served by taking such action outweigh the best interests of the public and the defendants in a speedy trial.

9. On March 17, 2005 defendants Angel Ferrer Jason Lopez initially appeared in this matter before United States Magistrate Judge Arnold C. Rapoport. On March 18, 2005 defendant David Bosah initially appeared before Magistrate Judge Rapoport. On March 23, 2005 defendant Argenis Moscoso initially appeared before Magistrate Judge Rapoport. On April 19, 2005 defendants Joshua Baez and Christian Delgado appeared and were arraigned before Magistrate Judge Rapoport.

10. By charging all defendants in one Indictment, the government has indicated an intent to try all defendants at one consolidated trial.

11. As of the date of this Order no defendant has sought or been granted severance.

12. Pursuant to 18 U.S.C. § 3161(h)(7) the time between the initial appearance of defendants Ferrer and Lopez on March 17, 2005 and defendants Baez and Delgado on April 19, 2005 is excluded from the seventy-day time period to try defendants Ferrer, Lopez, Moscoso and Bosah.

13. In light of the foregoing findings and because of the nature of this case and its complexity, it is unreasonable to expect adequate preparation for pretrial proceedings of the trial itself within the time limits established under the Speedy Trial Act.

14. No defense counsel objects to having this matter declared complex and excluding any time under the Speedy Trial Act. The grant of a continuance will enable all defense counsel the opportunity to review discovery with defendants, prepare motions, have the court conduct hearings

on any motions and to determine whether a non-trial disposition is appropriate or whether defendants wish to proceed to a trial in this matter.

15. Some of the defendants oppose this motion.

16. Pursuant to 18 U.S.C. § 3161(h)(8) the ends of justice are best served by granting the within motion, declaring this matter complex, proceeding under the schedule set forth below, and continuing this matter outweighs the best interests of the public and defendants in a speedy trial.

IT IS FURTHER ORDERED that a jury trial of the within case shall commence before the undersigned on Monday, November 28, 2005, at 9:30 o'clock a.m., with the selection of a jury at the United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania. After completion of the jury selection the trial shall continue in Courtroom B, Edward N. Cahn United States Courthouse, 504 West Hamilton Street, Allentown, Pennsylvania. This Order shall serve as a formal attachment for

trial.

IT IS FURTHER ORDERED that on or before June 3, 2005 the government shall provide defendants with all discovery in this matter.

IT IS FURTHER ORDERED that on or before June 30, 2005 that defendants shall file any motions pursuant to Federal Rule of Criminal Procedure 12(b) in accordance with Rule 12.1 of the Local Rules of Criminal Procedure for the Eastern District of Pennsylvania.

All motions shall be filed with the Clerk of Court, served upon counsel for all parties and a courtesy copy sent to the undersigned. Each motion shall be accompanied by a memorandum of law containing a brief recitation of the applicable facts, a concise statement of the legal contentions together with the authorities relied upon in support of such motion.

IT IS FURTHER ORDERED that within five business days after receipt of any motion any party desiring to oppose such motion shall file and serve on all parties, the Clerk of Court and the undersigned a legal memorandum in opposition to such motion pursuant to Local Rule 12.1.

IT IS FURTHER ORDERED that a hearing on all motions is scheduled before the undersigned on Monday, August 22, 2005, commencing at 9:30 o'clock a.m. in Courtroom B, Edward N. Cahn United States Courthouse, 504 West Hamilton Street, Allentown,

Pennsylvania. In the event that any hearing, if necessary, is not completed by the end of the day on August 22, 2005, the court will schedule an additional hearing prior to the November 28, 2005 trial date.

IT IS FURTHER ORDERED that on or before November 14, 2005 counsel for the parties¹⁸ are required to submit proposed jury instructions.

All proposed jury instructions shall be numbered and shall have citations of authority for each point (one instruction per page). If a model jury instruction is requested, counsel shall indicate whether the proposed jury instruction is modified or unchanged. If counsel modifies a model jury instruction, additions shall be underlined and deletions shall be placed in brackets. If a model jury instruction is unchanged, it shall be submitted by title and paragraph number reference only, and shall not be retyped verbatim.

IT IS FURTHER ORDERED that on or before November 21, 2005 each party shall file any objections to the proposed jury instructions proposed by the other party. Any and all objections shall be in writing and shall set forth the objectionable proposed instruction in its entirety. The objection shall then specifically set forth the objectionable material in the proposed instruction. The objection shall contain citation to legal

¹⁸ Whenever used in this Order, the terms "counsel" and "counsel for the parties" shall also refer to any unrepresented parties.

authority explaining why the instruction is improper and a concise statement of argument concerning the instruction. Where applicable, the objecting party shall submit a correct alternative instruction covering the subject or principle of law, with citation to legal authority supporting the alternative instruction.

IT IS FURTHER ORDERED that on or before November 14, 2005 all counsel and unrepresented parties shall submit proposed jury voir dire questions.

IT IS FURTHER ORDERED that on or before November 21, 2005 each party shall file any objections to the voir dire questions proposed by any other party. Any and all objections shall be in writing and shall set forth the objectionable voir dire question in its entirety. The objection shall then specifically set forth the objectionable material in the proposed voir dire question. The objection shall contain citation to legal authority explaining why the proposed voir dire question is improper and a concise statement of argument concerning the objection.

IT IS FURTHER ORDERED that at least five business days before commencement of trial, all parties shall submit to the court a written summary, not to exceed two pages in length, in plain language, of its contentions regarding the facts and that party's theories concerning their case. Prior to the beginning

of voir dire, all other parties may submit in writing objections or alternatives to this summary. The summary may be used by the court during jury selection and in the court's preliminary and final instructions to the jury in order to familiarize the jurors with the general framework of the factual and legal issues and contentions in the case.

IT IS FURTHER ORDERED that counsel shall familiarize themselves with the Local Rules of Criminal Procedure of the United States District Court for the Eastern District of Pennsylvania. Failure to comply with the within Order or the Local Rules may result in the imposition of sanctions.

IT IS FURTHER ORDERED that continuances will be granted only in extraordinary circumstances. Continuance requests shall be filed by one counsel of record for each represented party and by each unrepresented party. Continuance requests shall be submitted not later than ten days prior to the commencement of trial on a form approved by the undersigned.

IT IS FURTHER ORDERED that if a defendant is currently incarcerated, the defendant or his counsel shall notify the undersigned in writing immediately so that the necessary procedures can be taken to have the defendant present in the courtroom for any proceedings.

IT IS FURTHER ORDERED that pursuant to 18 U.S.C. § 3161(h)(8) the period between April 19, 2005 and November 28, 2005 shall be excluded in computing time under the Speedy Trial Act.

BY THE COURT:

JAMES KNOLL GARDNER
James Knoll Gardner
United States District Judge