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6 Attorney for Defendant Orozco-Cortes

7
 8 UNITED STATES DISTRICT COURT
 9 DISTRICT OF ARIZONA

10 United States of America,
 11 Plaintiff,

12 v.

13 Hugo Orozco-Cortes,
 14 a.k.a.: Hugo Orozco-Cortez
 a.k.a: Hugo Orosco-Cortez
 15 a.k.a.: Hugo Orozco

16 Defendant.

MAGISTRATE NO. 09-6540M

**Joint Motion for Extension of Time to
 Indict**

(Reentry After Deportation)

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 18 The above-named defendant, HUGO OROZCO-CORTES, who is accused of Reentry After
 19 Deportation in violation of 8 U.S.C. § 1326, being advised of the nature of the charges and
 20 of his rights in this matter, hereby moves this Court, pursuant to 18 U.S.C. § 3161(h)(8)(A),
 21 for a single 30-day extension of the United States' deadline to indict this matter, under the
 22 Speedy Trial Act. 18 U.S.C. § 3161. The United States, for the reasons set forth below, joins
 23 in this motion.

24 The government has made a plea offer in this matter, which requires the defendant to
 25 waive specific rights and hearings in exchange for a sentence substantially below the
 26 sentencing guidelines range, that will be withdrawn if it is not timely accepted before this
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1 matter is indicted in compliance with the Speedy Trial Act.^{1/} The defendant requests the
2 United States' deadline to indict be extended for several reasons. First, the defendant needs
3 additional time to review discovery and to investigate potential defenses, which will dictate
4 whether the defendant accepts the plea agreement. Second, the defendant is housed at CCA-
5 CADC in Florence, AZ which is located approximately 64 miles from Phoenix, AZ. This
6 distance makes it difficult to schedule a visit with defendants immediately, as counsel must
7 reserve at least half a day, and often a full day, to visit CCA-CADC including travel time.
8 For the foregoing reasons, the defendant asserts that the ends of justice will be served by
9 extending the United States' deadline to indict by 30 days and that the ends of justice
10 "outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.
11 § 3161(h)(8)(A).

12 The United States joins in this motion for a 30-day extension of time to indict for the
13 following reasons. Public records on file with the Administrative Office for the United States
14 Courts reveal that, for each of the last three years, immigration case filings have exceeded
15 2,000 defendants in the District of Arizona.^{2/} In fact, during each of those time periods, the
16 immigration filings in Arizona were the highest of any district in the entire Ninth Circuit.
17 Due to the high number of cases and limited resources, particularly in the areas of pretrial
18 detention space and availability of judicial officers to accommodate the numerous hearings
19 required in a normal criminal case, the United States Attorney has developed an early
20 disposition program for immigration cases, authorized by the Attorney General pursuant to
21 the PROTECT ACT of 2003. The early disposition program for immigration cases is
22 designed to: (1) reduce the number of hearings required in order to dispose of a criminal case;
23 (2) avoid having more cases added to the court's trial calendar than the judicial system can

24
25 ¹ Should the defendant be indicted and the plea offer withdrawn, any subsequent plea
offer made by the United States will be less favorable to the defendant.

26 ² For the twelve month period ending December 31, 2005, the Administrative Office reports
27 that 2,254 defendants were charged with immigration offenses in Arizona. For the same period ending
28 December 31, 2006, the Administrative Office reports that 2,101 defendants were charged with
immigration offenses in Arizona. Finally, for the twelve month period ending December 31, 2007, the
numbers increased, with 2,354 defendants being charged with immigration offenses in Arizona.

1 effectively handle, while still discharging the government's duty to prosecute federal crimes;
2 (3) ameliorate the shortage of pre-trial detention space by reducing the amount of time
3 between complaint and sentencing; and (4) avoid adding significant additional time to the
4 grand jury calendar to seek indictments in immigration cases, which in turn reduces court
5 costs.

6 To accomplish the goals of the early disposition program, the United States Attorney's
7 Office provides discovery at the outset of the case to defendants charged with violations of
8 8 U.S.C. § 1326. Thereafter, an early plea agreement is offered, pursuant to
9 U.S.S.G. § 5K3.1, that provides for a sentence substantially below the sentencing guidelines
10 range, if the defendant enters a guilty plea and agrees to waive all motions, defenses, probable
11 cause determinations, and objections which the defendant could assert to the information or
12 indictment, or to the court's entry of judgment against the defendant and imposition of
13 sentence upon the defendant, provided that the sentence is consistent with the agreement. The
14 defendant also agrees to waive any right to appeal the court's entry of judgment, any right
15 to appeal the imposition of sentence upon the defendant under Title 18, United States Code,
16 § 3742, and any right to collaterally attack the defendant's conviction and sentence under
17 Title 28, United States Code, § 2255, or any other collateral attack.

18 However, as discussed above, the plea offer expires upon the defendant being indicted.
19 Occasionally the defendant needs additional time, prior to the matter being indicted and the
20 plea expiring, to investigate the case and to make an informed decision regarding the plea
21 offer and the associated waiver of rights. The extension of time is particularly necessary in
22 immigration cases because most defendants charged with immigration crimes require the
23 assistance of an interpreter when speaking to defense counsel and analyzing the merits or
24 deficiencies of the case.

25 Although it may appear contradictory to an early disposition program to allow a
26 defendant an extension of time to investigate the case, the United States Attorney has found
27 that an extension granted for the defendant's benefit actually results in the case being resolved
28 earlier, with fewer filings and fewer hearings.

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A proposed order is submitted herewith for the court's consideration.

Excludable delay under 18 U.S.C. § 3161(h)(8) would be found to commence on January 13, 2010 for a total of 30 days.

s/ NEIL C. LABARGE
NEIL C.LABARGE
Counsel for Defendant.

s/ Leta Hollon
Leta Hollon
Assistant U.S. Attorney

Date: December 15, 2009