

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
El Paso Division**

UNITED STATES OF AMERICA)	
)	Case No. EP-07-CR-87
v.)	
)	The Honorable Kathleen Cardone
LUIS POSADA CARRILES)	

Government’s Motion for Setting of Trial Schedule and Date

The United States of America, by and through Michael J. Mullaney, Acting U.S. Attorney, and John W. Van Lonkhuyzen and Rebekah L. Sittner, Trial Attorneys, respectfully requests that this Court set this matter for trial on the earliest practical date consistent with 18 U.S.C. § 3161(d)(2), and in any event no later than September 14, 2009, and requests that the Court set a pre-trial schedule and deadlines as suggested below.

On March 23, 2009, the United States Supreme Court denied defendant’s petition for certiorari, in which he sought to reverse the decision of the U.S. Court of Appeals for the Fifth Circuit reinstating the indictment in this matter. Section 3161(d)(2) of Title 18, U.S.C., provides in part that:

If a defendant is to be tried upon an indictment ... dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical.

Seventy days from March 23, 2009 would be June 1, 2009 (a Monday), while 180 days from March 23, 2009 would be September 19, 2009 (a Saturday).

The Government submits that, other things being equal, this matter should be scheduled

for trial on June 1, 2009, in accordance with Section 3161(d)(2). However, counsel for the Government has spoken with counsel for defendant by telephone, and understands that the defense seeks a lengthy continuance and a trial date well beyond the 70-day date, and indeed beyond the 180-day date prescribed by statute, and intends to waive defendant's Speedy Trial rights in seeking such a continuance. The Government also wishes to alert the Court that it intends to seek a superseding indictment, which may contain additional charges based, at least in part, on evidence that has become available to the Government in the period since this Court dismissed the original charges in this matter. The Government therefore requests the earliest trial date convenient to the Court, and, even if the Court finds that trial on June 1, 2009 is not practical and the defendant waives his Speedy Trial rights, in any event a trial date no later than Monday, September 14, 2009. The Government further suggests that trial should be scheduled sufficiently in advance of September 19, 2009 (the 180th day, and a Saturday), to allow for a brief continuance if circumstances unforeseen at this time warranting a continuance develop in the coming months.¹

The Government also respectfully requests that this Court set the following deadlines and dates:

Jury Selection: The Government suggests that the Court set jury selection for the second Friday before the trial date, as jury selection in this case likely will take longer than one day.

Motion schedule: The Government suggests that this Court require that all substantive

¹ The Court originally set this matter for trial approximately 120 days after indictment. See the Court's *Scheduling Order* for this case (D.E. # 19) (indictment returned January 11, 2007; trial scheduled for May 14, 2007). One hundred and twenty days from March 23, 2009, would be July 20, 2009.

and dispositive motions must be filed one month before trial, with responses due two weeks later, and motions hearing the second Wednesday before trial.

Other dates: The Government suggests that the Court adopt a schedule similar to that set out in its previous *Scheduling Order* in this case (D.E. #19) for other dates, counting back from the trial date an equal or proportionate amount of time.

Respectfully submitted,

MICHAEL J. MULLANEY
ACTING UNITED STATES ATTORNEY

/s/ John W. Van Lonkhuyzen

/s/ Rebekah L. Sittner

By:

John W. Van Lonkhuyzen
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Certificate of Service

I hereby certify that, on April 6, 2009, I caused a copy of the foregoing pleading to be served upon Arturo V. Hernandez and Filipe D.J. Millan, counsel for Luis Posada Carriles, by electronic mail by the Court's CM/ECF system.

/s/ John W. Van Lonkhuyzen

John W. VanLonkhuyzen

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SCHEDULING ORDER

The Court having considered the *Government's Motion for Setting of Trial Schedule and Date*, and having heard argument from counsel at the status conference held on April 7, 2009, the Court hereby FINDS that the unavailability of witnesses and other factors resulting from the passage of time

___ DOES NOT make trial impractical within seventy days of March 23, 2009, the date the Supreme Court denied defendant's petition for certiorari, or

___ DOES make trial impractical within seventy days of March 23, 2009, and the defendant having waived any Speedy Trial rights he may have to trial within seventy days of that date, therefore:

It is hereby ORDERED that trial on this matter shall begin on _____, 2009, and the Court hereby ENTERS the following pre-trial schedule in this matter:

Deadline for filing substantive and dispositive motions:	One month before trial date;
Discovery deadline:	_____, 2009;
Due date for responses to substantive and dispositive motions:	Two weeks before trial date;

Status conference and motion hearing:

Second Wednesday before
trial date;

Jury Selection:

Second Friday before trial
date.

SO ORDERED.

Signed on this ____ day of April, 2009.

The Honorable Kathleen Cardone
United States District Judge